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The American Political Science Review

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THE WAR INDUSTRIES BOARD, 1917–1918; A STUDY IN INDUSTRIAL MOBILIZATION

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With the advent of "total war" in Europe, America was shocked into a realization of the inadequacy of her defense measures in the event of becoming involved. While ideas conflicted sharply as to what our attitude toward the war should be, most schools of thought united in urging increased preparedness, and Congress appropriated staggering sums for defense.[1] But the realization likewise came that preparedness involves more than mere appropriations—it takes time, and men, and materials, and industrial plants, and above all, coördination, in order to maintain defenses ample by modern standards. So as we contemplate the possibility of war, the spotlight focuses on our industrial system as perhaps the most important single factor in defense.

The entrance of this country into the last war found us similarly unprepared, from both a military and an industrial standpoint, and it was almost a year before the industries of the nation were meeting the tremendous demands thrust upon them, with production just reaching its peak at the time of the Armistice.[2] Apparently the

[1] The question is frequently raised whether "preparedness," in a military sense, may not be a force tending to involve a nation in war rather than a safeguard against involvement. Whatever the answer to that may be as to peace-time armament, as long as war is actually rampant in the world, the advocates of preparedness dominate public opinion. Likewise it is occasionally urged that merely thinking about war and preparing in a non-military way for that event may develop a state of mind that could be too easily swayed to a war mood if the choice should come. It is argued for such planning that an awareness of the consequences of war would strengthen the determination never to incur another one. Current experience indicates that if public officials were to ignore the possibility of war, they would be considered derelict in their duties.

[2] Preliminary report of Baruch, chairman of the War Industries Board, to President Wilson, Dec. 24, 1919, printed in Baruch, *American Industry in the War*

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prevailing opinion had been that somehow we would manage to stay out of the war, and consequently there had been no real attempt to develop plans of organization, statements of requirements, or inventories of facilities and possibilities of expansion. Perhaps the actual war supplies could not well have been manufactured in advance, since the war quickly developed new weapons and new methods of warfare, as well as a scale of operations totally unprecedented.[3] But a more serious hindrance was the lack of harmony in industry itself. It was this lesson—the need for organization—that has prompted the present efforts to prepare industry in advance for the emergencies of war.[4]

When American industry finally did begin to fill its place in the scheme of conflict in 1918, it was largely due to the efforts of the War Industries Board, one of ten major war administrations, each set up independently and each reporting separately to the president. These were: the Capital Issues Committee, which controlled the sale of securities; the War Finance Corporation, providing federal assistance to essential enterprises; the Provost Marshal General, who administered the Selective Service Law; the War Labor Policies Board and the National War Labor Board, which worked together in handling industrial disputes and labor problems; the War Trade Board, which controlled all exports and imports; the Administrations of Food, Fuel, Shipping, and Railroads; and the War Industries Board, which handled everything not allotted to the others

(Final report of War Industries Board, 1921—cited hereafter merely as *Final Report*), p. 8. See also foreword by General Pershing to Baruch, *Taking the Profits out of War* (1936), p. 4. For strong criticism of the lack of preparedness in 1917, see Crowell, *How America Went to War—The Giant Hand* (1921), pp. xii–xxvi, 2–5.

[3] "It would perhaps have been impossible to have anticipated these shortages and provided against them beforehand because of the extreme difficulty of defining military needs. The war was constantly developing new needs so that a comprehensive undertaking in war manufacture, inaugurated five years before we entered the war, might have been largely wasted. The program of supplies had to be developed in closest harmony with the military program proper." *Final Report*, p. 19.

[4] Note especially the civilian War Resources Board formed on August 10, 1939, to advise the War and Navy Departments on industrial mobilization; and the National Defense Commission appointed by President Roosevelt in June, 1940. The War Resources Board submitted its report on November 4, and was disbanded on November 25, 1939. *N. Y. Times*, Aug. 10, p. 1, col. 4; Nov. 4, p. 3, col. 7; Nov. 25, p. 2. col. 6 (1939). The report has never been made public. The National Defense Commission was established under the act of Aug. 29, 1916, establishing the Council of National Defense, still on the statute-books. 39 Stat. 649 (1916). For current discussion, see *Time* magazine, June 3, 1940, pp. 11–15, 65.

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and served as a general coördinator. The origin, operation, and legal basis of the War Industries Board are discussed in the following pages.

I. ORIGIN

In 1916, war preparations had made at least three beginnings. A committee of the Naval Consulting Board had attempted to inventory all the important industrial establishments in the country;[5] the Kernan Board, appointed by the Secretary of War, had investigated the country's munitions resources on the question of the government's manufacturing its own war equipment;[6] and the Council of National Defense, with its corollary advisory commission, had been set up by the Army Appropriation Act of August 29, 1916.[7]

The Council of National Defense was composed of the Secretaries of War, Navy, Interior, Agriculture, Commerce, and Labor. Its powers were only advisory, but its scope of action included the "coordination of industries and resources for the national security and welfare," and the "creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the nation."[8] The Advisory Commission consisted of seven men appointed by the President on nomination of the Council, each an expert in some particular line. Each body developed its own organization of experts, advisers, and committees, most of the members being industrial executives serving only part time and without compensation. "The broad idea of the Council was to serve as a center of contact between the government and the industrial life of the nation."[9] In many cases, committees of the Council developed into the separate administrative bodies which later handled the major war problems. This was true, for example, of the Railroad Administration, the Food Administration, the Shipping Board, the War Trade Board, and the War Industries Board.

A Munitions Standards Board had been created by the Council

[5] *Final Report*, p. 19. For a contemporary account of the early history of the War Industries Board, see Hitchcock, "The War Industries Board," *Journal of Political Economy*, Vol. 26, p. 545 (1918).

[6] Authorized by 39 Stat. 214 (1916). The Kernan Board reported advising against the government manufacture of arms and munitions, Sen. Doc. No. 664, 64th Cong., 2d Sess. (1917). When steel prices were extremely high in the summer of 1917, there was serious talk of commandeering the whole iron and steel industry, but it was never attempted. *Final Report*, p. 115.

[7] 39 Stat. 649 (1916). [8] *Ibid.* [9] *Final Report*, p. 20.

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on February 28, 1917, to coöperate with the War and Navy Departments in establishing standards of manufacture for munitions, and a month later the General Munitions Board was created to eliminate competition in the munitions purchases of the two departments and assist in acquiring raw materials and finding manufacturing plants. The membership of the two boards overlapped, and the new one included official representatives of the War and Navy Departments.

When actual war buying commenced, and shortages appeared or were threatened in a number of lines, the advisory commission began to develop a system of committees of industries, consisting of the leading producers in each field, so that the government could learn the capacities of the industries, the latter could learn the government's program of needs, and questions of prices and distribution of orders could be discussed. The position of these committees in appearing to represent both the buyers and a selected few of the sellers quickly aroused dissatisfaction among those firms not represented,[10] and led to a reorganization.

On July 28, 1917, the Council created the War Industries Board, which took over the duties of both the Munitions Standards Board and the General Munitions Board, and began revising the industrial committees so as to make them subordinate to the Board and composed only of direct representatives of the government who had no financial interests in the industries concerning which they advised. The general plan of the War Industries Board was to act as a "clearing house" in meeting all the war industry needs of the government.[11] The industrial committees were referred to as "commodity sections," and were differentiated from the so-called "functional divisions" that controlled and coördinated the main features of the Board's work. At the close of the war, some fifty-seven commodity sections had been set up,[12] falling under either the Raw Materials Division or the Finished Products Division of the Board.

[10] *Id.*, p. 22.

[11] The resolution of the Council creating the War Industries Board is set out in full in Garrett, *Government Control Over Prices* (War Industries Board and War Trade Board publication, 1920), p. 203, n. 1. It is reprinted in part in *Final Report*, p. 22.

[12] The various divisions and sections of the Board and their membership are set out in full in *Final Report*, pp. 291–316.

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Their peculiar importance in the structure will be seen as we consider the various operations of the Board.[13]

At the same time, it was necessary to have some medium of contact between the commodity sections of the Board and the producers and business men who dealt in that particular commodity. This need was filled by the War Service Committees, in which the leaders of each industry spoke for the entire trade. In those trades that had national organizations, the problem was simplified, and in the unorganized trades the United States Chamber of Commerce assisted in developing War Service Committees.[14] Some 267 of these committees were in existence at the close of the war.[15]

While still acting as a subordinate body to the Council, which had only advisory powers, the War Industries Board was increasingly relied upon by other agencies of the government. The constant shortage of certain commodities necessitated some control over prices and distribution, else the government would have to outbid all others in the market; and these problems, among others, devolved upon the Board. By means of voluntary agreement between the government and the industries, as represented by the commodity sections and the War Service Committees, the Board issued priority rules, fixed prices, inaugurated projects for increased production, and promulgated rules for preventing waste and unnecessary use. But as the need for a more comprehensive control of industry became apparent, the Board's lack of technical authority and legal responsibility was felt keenly. Consequently the Board was removed from the Council of National Defense and set up as

[13] The functions of the commodity sections are described at some length in the circular of the War Industries Board creating the Requirements Division, *Final Report*, p. 320. Also printed in 56 *Cong. Rec.* 5560–1 (1918). It may be wondered why the control of the iron and steel industry, which was so directly important to warfare, was not intrusted to a separate body, as were foods, fuels, and transportation, rather than to a commodity section of the Board. Apparently the only answer is that the organization developed in response to the needs of the moment rather than as the result of a preconceived plan, and since this industry was so important, its control was already under way before the separate administrations were developed.

[14] A pamphlet of the War Service Executive Committee of the United States Chamber of Commerce, Feb. 28, 1918, set forth the advantages of this type of organization. Reprinted in *Final Report*, p. 288.

[15] The War Service Committees and their membership are listed in *id.*, pp. 395–409.

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an independent agency responsible to the President, with its duties clearly defined by him.

The reorganization was effected by a letter from the President, March 4, 1918,[16] to Bernard M. Baruch, then commissioner of raw materials in the old War Industries Board, appointing him chairman and setting forth specifically the powers and duties of the new Board. This was reinforced by an Executive Order of May 28, 1918,[17] after the passage of the Overman Act,[18] approved May 20, which gave the President power to reorganize the executive agencies and redistribute their functions as he might deem necessary.

The Board continued its same organization and policies, with the difference that now the authority for all principal controls except price-fixing was centralized in the new chairman. In the determination of prices, the President stated that the chairman was to be governed by a committee consisting of the chairman, the members of the Board in charge of raw materials, manufactured products, and labor, and the chairman of the Federal Trade Commission, the chairman of the Tariff Commission, and the Fuel Administrator. In practice, the membership was slightly different, and included also a representative from the Army and one from the Navy.

In all questions other than price-fixing, the ultimate decision rested on the chairman of the Board. He in turn decentralized the execution of his powers, making each member of the Board responsible for a certain field, generally a functional division, with the power of final decision in that field. An appeal from a decision of a

[16] *Final Report*, p. 25. Also in 56 *Cong. Rec.* 5559 and 10554 (1918). It will be worth while to summarize briefly the contents of the letter, since it was the source of the Board's authority. The functions of the Board should be: (1) the creation of new facilities and opening up new sources of supply; (2) conversion of existing facilities to new uses, where necessary; (3) conservation of resources and facilities; (4) advice to purchasing agencies of the government on prices to be paid; (5) determination of priorities of production and delivery and of rationing; (6) making of purchases for the Allies. The duties of the chairman were to be: (1) to act for the benefit of all supply departments of the government; (2) to interfere with normal processes as little as possible; (3) to guide and assist wherever necessary; (4) to iron out conflicts of interest between departments as to supplies; (5) to see that contracts and deliveries under (3) and (4) above were followed up; (6) to anticipate prospective needs as far in advance as possible. The ultimate decision of all questions except the determination of prices should rest with the chairman. The membership of the price-fixing committee was specified, and a suggested committee to advise on priorities was named.

[17] Exec. Order No. 2868, 65th Cong., 2d Sess. (1918); 56 *Cong. Rec.* 10555 (1918); *Final Report*, p. 26. [18] 40 Stat. 556 (1918).

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member of the Board could be taken to the chairman only by the Secretary of War, Secretary of the Navy, Chairman of the Shipping Board, or other head of an independent department.[19] At the outset, this principle of authority in the chairman was also applied to the commodity sections, and the section chiefs were given the sole power of decision. But the section chiefs represented the Board's authority over the supply of the commodity, while the other members of the section—officers of the buying departments—represented the forces of demand; and as long as the authority was all on the one side, it was hard to get the coöperation of the buying departments.[20] This was remedied by delegation of the authority to the commodity section as a whole, rather than to the section chief alone.

Thus the War Industries Board as finally constituted was an executive agency, responsible to and deriving its authority from the President. The legal foundations for that authority will be discussed at a later point. Its work fell into three phases: (1) the functional divisions exercising the principal controls, and generally headed by a member of the Board; (2) the commodity sections, consisting of a chief who represented the Board, his staff organization and representatives from each of the government departments interested in that commodity; and (3) the War Service Committees consisting of the leaders of the various industries who represented their particular trade in any dealings between that trade and the government.

II. OPERATION

The first few months of our participation in the war found American industry in a state of great confusion. Even before our entry, Allied buying had skyrocketed prices and created shortages in many commodities. But now, the Allies were competing against our own military buying, the various supply departments of the government were competing against each other, and government contractors were competing among themselves for fuel and raw materials, while the normal competition among producers for markets had practically disappeared. Normally, a rising price is self-defeating, because, beyond a certain point, demand will begin to fall off. But a war demand is absolute, and that potential ceiling is removed when the government must have the supplies regardless

[19] *Final Report*, p. 104. [20] *Id.*, at p. 106

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of cost. The force of such a demand was intensified by the flooding of the raw materials markets with options and inquiries made to cover bids on government orders, so that prices quickly lost all relation to either the cost of production or the actual shortages. In a seller's market, a temporary shortage due solely to distribution factors will boost prices as effectively as an actual shortage in supply.

The market conditions were aggravated by the haphazard placing of orders. Lack of coördination in buying resulted in congestion in some manufacturing areas, while others were not being fully utilized; and even in plants that had orders beyond their capacity, production was slowed down because the heavy flow of fuel and raw materials was jamming the railroads. Likewise the filling of orders was unbalanced, so that one department might succeed in overstocking itself, while others could not secure necessities. And to add to the general picture of confusion, some four million men of working age were removed from productive employment. These were the types of problems that confronted the "High Command of Industry" as it gathered momentum in the fall of 1917.

The general method of operation of the Board was to hold a series of conferences and discussions between the Board, the government buyers, and the representatives of industry until an agreement satisfactory to all could be reached. That agreement was then promulgated as a ruling of the Board, and all parties pledged themselves to abide by the Board's dictates. The Board had no legal sanction for enforcing its rulings, but, as we shall see, the threat of commandeering or of withholding priority or preference proved sufficient to keep recalcitrants in line.

Among the functional divisions, many of the operations overlapped, and all of them influenced one another. But the work can be classified for convenience as: (1) the coördination of demand; (2) the administration of the priorities system; (3) the organization of supply; and (4) price-fixing. This classification does not include the Foreign Mission which the Board sent to Europe in the summer of 1918 to aid in the international control of certain commodities and to help coördinate the work of the Allies; nor does it include the Labor Division of the Board, since labor problems were primarily under the control of the War Labor Policies Board and the National War Labor Board.

1. *The Coördination of Demand.* One of the first problems to arise

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upon our entrance into the war was the coördination of Allied buying with that of our own government, to avoid bidding against each other for the same goods. The Allies were extremely anxious to borrow money from our Treasury to make purchases here, and to get priority in manufacture and delivery; so they readily agreed with the suggestion of the Treasury Department that they place no orders and make no purchases except through or with the approval of our government.[21] The Allied Purchasing Commission was created in the War Industries Board on August 27, 1917, and thereafter all Allied purchases made in the United States with money borrowed from our Treasury were approved through it. The expenses of the Commission were shared by the Allied missions in proportion to the purchases of each in this country. The procedure was for the war missions of the several governments to present to the Commission their proposed orders and statements of future requirements, and the Commission would assist in getting the best prices, delivery terms, and priorities that were practicable, although with no control over the making of the contract. The orders were submitted by the Commission to the clearance committee in the same way as our own governmental orders, and conflicts of interest were ironed out in frequent meetings conducted by the Commission.

The organization of industry would have been immeasurably easier if the government supply bureaus had been able to work out in advance their programs of future requirements.[22] Production planning was necessarily a day-to-day affair as long as the war needs were disclosed only by the actual placing of the orders. To meet this need, the Requirements Division of the Board was, rather belatedly, organized in June, 1918.[23] Each government department and the Allied Purchasing Commission submitted a statement of its estimated requirements projected as far into the future as possible, and these estimates were considered at daily meetings of the Division. The Division then sent the estimates on to the commodity sections that were in touch with the various fields con-

[21] *Final Report*, p. 33.

[22] "That much of the confusion experienced in collecting the supplies of this war could have been avoided by a more painstaking, thorough, and comprehensive effort on the part of the government supply bureaus to work out a program of requirements, even a program tentative in many of its details, there is little doubt. That such a program would have been exceedingly difficult to frame is quite certain." *Final Report*, p. 37.

[23] The circular of the War Industries Board creating the Requirements Division and setting forth its duties is printed in *id.*, p. 320; also 56 *Cong. Rec.* 5560 (1918).

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cerned, and the sections reported back to the buying departments as to the possibilities and best methods of meeting the requirements. The meetings of this Division gave to the Board a better perspective of the whole field of operations, and for the buyers it was their first knowledge of one another's needs and where their respective efforts conflicted or overlapped.

But the planning of future requirements left untouched the problem ofpl acing orders for immediate needs. The first attempt to systematize government orders was the formation of the "clearance committee" in the General Munitions Board, later the first War Industries Board. The committee prepared a "clearance list" setting forth the materials in which a shortage existed or was imminent, or on which a special price arrangement had been made with the producers, and government agencies were requested not to place orders for anything on this list without first having the order cleared by the committee. Each buying department read its proposed orders before the committee, and by discussion and agreement between the various interests the orders were placed where they would cause least congestion and least interference with other orders or with the policies of the Board.[24]

By July, 1918, the clearance function had become too big for one committee to handle, and it was taken over by the commodity sections that now contained representatives from each of the supply bureaus interested in the respective commodity. The clearance committee was reorganized into a Clearance Office whose function was merely to receive requests for clearance, record them, and transmit them to the proper commodity sections, the sections in turn reporting back through the Clearance Office. The sections thus had records of the standing orders for each commodity, and were able to distribute them equitably over the entire industry. The clearance might be unrestricted, in which case the buyer could go

[24] The importance of properly placing orders was strikingly shown during 1918 when the transportation tie-up was hampering essential production, especially of iron and steel. For example, a Buffalo steel plant was manufacturing projectile steel to be shipped to Cincinnati for forging and to be returned to Buffalo for final machining, while a Cincinnati plant was making projectile steel which was being sent to Buffalo for forging and machining. The Board rearranged the contracts so as to eliminate the cross-hauls and supply each with materials from its own area. This was but one of many contracts which had been placed on a competitive basis, without regard for transportation factors, before control was established, and which required revision by the Board. *Final Report*, p. 122.

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into the market and order as he saw fit, or it might be restricted as to the area in which the order could be placed, or as to the electric power system on which the order would draw, or restricted as to certain plants or as to the creation of new facilities, or the order might be actually allocated to a particular source of supply, or there might be merely advice as to a suitable source.[25] The clearance list as it stood on June 24, 1918, contained upwards of 160 different materials or types of materials, orders for which were required to be cleared by the Board.[26]

Thus future needs were planned through the Requirements Division, and the immediate placing of orders was handled through the Clearance Office. But it was also found necessary from the very first to determine the sequence in which the orders should be filled, and the priorities committee was formed on May 3, 1917, to take over this job from the clearance committee.

2. *The Administration of Priorities.* The priorities system grew to be perhaps the most outstanding feature of the war-time industrial mobilization, and in the reorganization of the War Industries Board in March, 1918, the President specifically conferred on the chairman the control of priorities in production and delivery. On March 27, this work was embodied in the Priorities Division of the Board. The first efforts under the priorities committee had been purely advisory, but in its full-fledged form the system required that every buyer obtain a priority certificate rating his order as of a certain degree of urgency, and every industry and many individual plants were classified as to the preference they would receive in apportioning fuel, power, transportation, and labor. The guiding principle of priority and preference was the degree to which the filling

[25] An example of the method used in actually allocating orders is found in the organization of the lumber industry. The producing areas were divided into districts, each handled by a "lumber emergency bureau," and whenever a government order was to be placed, the section would allot it to one or more of these bureaus, each bureau in turn allocating its share to the various mills under its jurisdiction. Under this system, emergency orders could be placed in a few hours. One order for five million feet was distributed in Louisiana and Texas in five or six hours, and the materials were all shipped within four days. Of course the lumber industry did not suffer from shortages, because during the war building construction was less than fifty per cent of normal, and its chief problem was to discourage production for the sake of economies in labor, capital, and transportation. *Id.*, pp. 211, 212.

[26] The clearance list of June 24, 1918, is set out in *id.*, p. 319; also in Garrett, *Government Control Over Prices* (War Industries Board and War Trade Board, 1920), p. 217, n. 1.

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of the order or the manufacturing of the goods directly aided the prosecution of the war, and the less military demands were ruthlessly sacrificed.[27]

Priority control was first established by voluntary agreement between the government and the industries; but, once begun, it tended to perpetuate itself, and even when only partially complete it furnished a powerful weapon for enforcement of the Board's rulings. By removing a plant from the preferred list, or by denying priority certificates for orders against that plant, it could be literally starved out, and in exchange for the government's favor, they readily agreed to abide by the regulations. It was likewise of great importance in keeping prices down, since the effect of abnormal demands was lessened when the government decreed which demands should be satisfied. In fact it was a necessity after price-fixing was begun, because when prices were fixed in a market where demand far exceeded supply, the right to buy no longer went with the deepest purse, and the distribution of goods would be largely by chance or personal favoritism, in the absence of some control. But most significant of all its effects, by thus determining the relative importance of all industries and plants and of all orders for goods, it was possible to achieve a balanced program of manufacturing and avoid over-production of one war material at the expense of another equally important.

In classifying orders, five general classes were set up[28]—AA, A, B, C, and D—with suffix numbers in each class, as AA-1, AA-2, and so on. The classes were defined as follows: AA comprised only emergency war work of an exceptional and urgent nature; A included all other war work; B included work which, while not primarily designed for war, was still of national importance; C included all orders and work not covered by priority certificates, but which fell within the lists of purposes, industries, or plants entitled to preferential treatment; D included everything not falling within one of the higher classes. No certificates were issued in C or D.

[27] The War Industries Board defined the purpose and test of priorities as follows: "The paramount purpose of priorities is the selective mobilization of the products of the soil, the mines, and the factories for direct and indirect war needs in such a way as will most effectually contribute toward winning the war. In requesting priority the petitioner should join with the committee in applying the test: 'To what extent, if at all, will the granting of this application contribute, directly or indirectly, toward winning the war; and if at all, how urgent is the need?'" Sec. 41, Priority Circular No. 4, July 1, 1918, *Final Report*, p. 337; also Garrett, *op. cit.*, at p. 220, n. 1.

[28] *Id.*, *Final Report*, p. 330.

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In accordance with the principle of favoring direct war work, all orders in class AA took precedence over orders in the other classes, Class A took precedence over B, C, and D, within a class A-1 took precedence over A-2, and so on. This did not mean that work should cease on orders of a lower classification, but only that such preference should be given that the orders of a higher class would be delivered on the date specified in the order. If two orders were in the same class, the one of prior delivery date had preference, unless this would delay delivery of the order contracted for earlier, in which case the earlier order was preferred. In all cases the controlling date was that of the order rather than that of the priority certificate.

The procedure was for the person who had work to be done to apply to the priorities committee, or later the Division, on a special form asking for an order against a manufacturer or distributor, and asking for delivery by a certain date. The committee would issue a certificate based on the purposes of the order, and the buyer would present the certificate to the one against whom it ran, who then would arrange his production program so as to give delivery to that order in its turn relative to other priorities.

By July 1, 1918, all industry had been brought within the priority rulings, and the volume of business necessitated setting up an automatic system.[29] All orders falling within class A-5 or lower could be classified by the buyer himself, by reference to a published schedule, and by attaching his affidavit as to the war uses for which the material was needed. He then proceeded as if with a priority certificate.

The priority of orders was supplemented by a "preference list," which on September 3, 1918, contained some 73 industries and about 7,000 separate plants,[30] classified as I, II, III, or IV, accordingly as they directly or indirectly aided the prosecution of the war. This list guided the apportionment of industrial necessities such as fuel, power, labor, and transportation so that the needs of a plant in a higher category were to be fully satisfied in preference to those of a lower one. Whenever a plant not on the list took a war order, it was promptly placed there if its needs required it, and this gave an incentive for owners to convert their plants to war work.

[29] *Id.*, p. 331.

[30] *Final Report*, p. 56. Priorities Circular No. 20, containing Preference List No. 2, excluding the list of 7,000 plants, appears in *id.*, p. 342.

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In the iron and steel industry, an agreement was reached with the Board on June 6, 1918, that even after all priority certificates were filled, and all orders falling within the "purposes entitled to preferential treatment" had been satisfied, no other orders should be filled without written approval of the director of steel supply.[31]

The program of concentrating industry on war needs soon raised the problem of what to do with non-war production. This was especially important in the construction industry, and the Priorities Division established a system of permits, under which all large building operations not essential to the war were required to be approved by local councils of defense. The result was an almost complete cessation of non-war construction.[32] Similarly, there was some talk of completely suppressing "non-essential industries;" but a committee appointed by the President to study the problem disapproved total prohibition, recommending instead a program of general curtailment.[33] Accordingly, an industrial adjustment committee was formed in June, 1918, to aid in reorganizing those industries, working in connection with the commodity sections.

3. *Organizing the Supply.* The administration of the priorities system to a considerable extent alleviated the problems of supply, since the supply of goods was largely determined by the allocation of raw materials, fuel, transportation, and power. But some other functions of the Board were peculiarly concerned with increasing the amount of goods available. As preliminary to this work, it had been necessary to study the production facilities of the country, and the Council of National Defense had formed an Industrial Inventory Section to continue the investigations begun in 1916. By May, 1918, the inventory included 28,000 separate plants catalogued in useful form, and in the meantime the commodity sections

[31] The agreement and rules for its administration were set out in a Joint Circular of Parker and Replogle, July 3, 1918, printed in *Final Report*, p. 368.

[32] Judge Parker's famous Circular No. 21 of Sept. 3, 1918 (*id.* at 381, 56 *Cong. Rec.* 10554), which virtually put an end to non-war construction work, was naturally met by a storm of protest from the building industry and allied trades. The Senate adopted a resolution introduced by Senator Calder of New York (Sen. Res. 304, 65th Cong., 2d Sess.), Sept. 13, 1918, asking the Board to explain why the order was issued and by what authority. Baruch replied in a letter to the Senate (*Final Report*, p. 365; 56 *Cong. Rec.* 10553) in which he referred to the powers and duties outlined in the letter of the President which set up the Board; pictured the shortages in iron and steel, fuel, transportation, and labor; and showed the necessity of the order to the successful meeting of the war needs. See also, Crowell, *How America Went to War—The Giant Hand* (1921), pp. 49–55.

[33] The report of the committee is set out in *Final Report*, p. 350.

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had compiled statistics on raw material resources. As finally organized, the statistical work of the Board was carried on by the Division of Planning and Statistics, which operated through six sections: Price Statistics, War Contracts, War Industries Abroad, Questionnaire Section, Editorial Section, and Commodity Statistics Section.

The industrial inventory work was transferred to the Resources and Conversion Section, organized on May 27, 1918, and the country was divided into twenty-one industrial regions with regional organizations of the local business men. In addition to continuing the inventory work, this section handled the problems of converting peace-time plants to the production of war materials. For this purpose, the product which a plant normally turned out was of less importance than the processes for which the plant was equipped. Thus carpet plants began to make blankets and army duck, automobile factories made airplanes, horseshoe plants made trench picks, shirt factories turned out mosquito net, factories for rubber goods produced gas masks, watch factories made time fuses, and furniture plants made ammunition boxes.[34]

In addition to converting old plants, the location and construction of new plants was of great importance, and shortly before the Armistice a Facilities Division of the Board was organized to harmonize all government construction work. It was planned that after the Requirements Division had received the estimates for future needs, and they had been passed upon by the commodity sections, the estimates would go on to the Facilities Division to determine what steps would be necessary to provide manufacturing equipment. Then when the actual orders should be received, this Division would clear the orders with a schedule of available facilities attached. It was further planned that this Division should absorb part of the work of the Advisory Committee on Plants and Munitions, which had worked in a general way to stimulate production and advise on plant extensions.

Another very important field for the Board's attention was conservation, both in production and distribution. This work had been going on for over a year before it was transferred to a Conservation Division in May, 1918. The aim was to eliminate wasteful trade practices and to release man-power, materials, manufacturing facilities, and capital by reducing the number of different types, pat-

[34] For further examples, see *Final Report*, p. 42.

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terns, and styles of articles manufactured, and by requiring the substitution of more plentiful for less plentiful materials. By conference and discussion, schedules were drawn up embodying conservation rules, and these schedules were agreed to by the industry as a group on the one hand and the government on the other. The Board had the sanction of the preference lists, but for the most part the voluntary coöperation of the industry was sufficient.

As examples of the type of work done by this division, the trade practice was discontinued of allowing retailers to return unsold bread to the bakers for disposal as waste, with an estimated saving of enough bread to feed 200,000 people plus about four per cent of the total man and equipment power used in handling the bread. All retail merchants were requested to cut deliveries to not more than one a day over each route and establish coöperative deliveries when possible, with estimated savings where tried of from twenty-five to fifty per cent in man-power in the former case and fifty to seventy-five per cent in the coöperatives. The makers of men's clothing limited the length of sack coats and the length and sweep of overcoats, reduced the size of samples, and restricted each manufacturer to not more than ten models of suits per season, saving twelve to fifteen per cent in yardage. Paper wrapping and baling was substituted for boxing wherever possible. The yardage on spools of thread was increased from 150 to 200 yards to save shipping space, round objects being the most inefficient shipping form. The shoe schedule (not completely in effect at the time of the Armistice) restricted manufacturers to only three colors, forbade new lasts, and limited the height of shoes. Tire manufacturers agreed to reduce from 287 styles and sizes to 32, with further reduction to nine within two years. Bathing caps were restricted to one style and one color for each manufacturer, and even the steel from corsets was sacrificed to the need for armaments.[35]

In connection with the iron and steel industry, the Conservation Division worked with the commodity section in preparing a rationing plan to curtail non-essential consumption. The Board fixed the maximum that could be allotted to each such industry, and the section apportioned that to each plant on a basis such as to let each member get the same percentage of his normal production as all others. Some thirty such rationing orders were issued to manufacturers of commodities whose chief constituent materials were iron

[35] *Id.*, pp. 62, 65–67.

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and steel. The most important of these was the automobile industry, which consumed some two million tons of steel a year, as well as rubber and motor fuel which were necessary to the war. During the last half of 1918, the industry was limited to twenty-five per cent of its 1917 production, and if the war had lasted into 1919, peace-time production would have ceased entirely.

4. *Price-Fixing.* It has been pointed out that the abnormal needs of war caused a dislocation of the normal forces of supply and demand,[36] so that prices had advanced tremendously even before the United States entered the war. For example, the average price of metals in March, 1917, was 247 per cent of the 1913 average, and by July of the same year it had reached 333 per cent. Iron and steel products hit a peak of 370 per cent in July; and during the same period of March to July, foods went from 142 per cent of normal to 167 per cent, clothing from 157 per cent to 187 per cent, and chemicals from 159 per cent to 180 per cent.[37] The government could possibly have paid the exorbitant prices and recouped itself by surplus profits taxes or by floating more Liberty Loans, but the civilian population could not long have stood such an inflated price structure, and the inevitable collapse at the end of the war would have been even more disastrous than the one that was experienced. Then, too, popular sentiment ran high against war profiteering, and the confusion of an unstable market was hampering production. Some method of keeping prices down was clearly required.

[36] See also, Taussig, "Price-Fixing as Seen by a Price-Fixer," *Quarterly Journal of Economics*, Vol. 33, pp. 205, 210–11 (1919).

[37] The following table prepared by the Price Section of the War Industries Board shows the average price of all commodities during the four-year period, the average price from July, 1913, to June, 1914, being taken as the base with an index number of 100. Garrett, *Government Control Over Prices* (War Industries Board and War Trade Board, 1920), 27:

	1915	*1916*	*1917*	*1918*
January	100	115	148	185
February	100	118	151	187
March	100	121	156	188
April	100	123	170	191
May	100	123	178	190
June	100	122	183	189
July	102	123	189	193
August	102	125	187	196
September	102	127	186	210
October	104	132	182	201
November	107	141	183	201
December	111	144	182	203

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Surplus profits taxes were used,[38] but in the absence of control their tendency would be further to raise prices, so as to make the manufacturer's untaxed portion as large as possible. Normally, the increasing supply which follows a rise in price tends to retard the rise; but this was impossible now, since the demand for war goods was always greater than the maximum possible production, and an increase in the production of one commodity would be at the risk of producing a new shortage in some other. The pressure of abnormal demand was somewhat relieved by the priorities system, since the government decreed who was to get the goods, apart from who could pay the highest price. But priorities alone were insufficient, since although the buyers could no longer bid against each other for the goods, still the demand existed, and with the seller sure of his market he could safely charge what he thought the traffic would bear. The only solution seemed to be actual governmental price-fixing.

The basis for determining prices was to be the cost of production plus a reasonable profit, but a troublesome question arising at the outset was whether the price should be flexible, varying with the production cost of each plant, or a flat rate uniform for the entire industry. Investigation showed such a diversity of the production costs of various plants in an industry, due primarily to different degrees of integration, that the task of fixing and enforcing an individual price for each plant would have been prohibitive. The flat rate method was adopted; but then the question arose whether the price should be relatively low so as to get the goods cheaply and prevent great profits by the low-cost producers, but with the danger that the high-cost producers would not make sufficient profits to keep them in business and enable them to expand their plants; or whether to pay a higher price, allow considerable profits to the highly integrated plants, but with the assurance that even the high-cost producers would make sufficient profits to induce expansion and attract new capital. The imperative demand for expanding production and the need to keep the enthusiastic support of business men induced the second course—fixing a price high enough to give a substantial profit to the "bulk-line," or marginal, pro-

[38] 39 Stat. 1000 (1917); 40 Stat. 302 (1017). Official Treasury figures showed that these taxes, plus the normal income tax, often ranged as high as 82.4 per cent of the excess book profits for the war years. Sullivan, "Work of the War Policies Commission," *Current History*, Vol. 35, p. 240 (1931).

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ducers.[39] For the more efficient, the government relied on surplus profits taxes to keep the margin down, and the plan avoided subsidizing the high-cost plants. A pooling arrangement had been seriously considered, in which the profits of the one group should be turned over to cover the losses of the other, but it was rejected as likely to reduce production, and it would probably have necessitated the government's taking over the entire supply of the commodity and rationing it out among the consumers at a price based on the average cost of production of both groups.

It had early been decided that the controlled prices should be extended to civilian as well as governmental purchases, and to the Allies if the policy were made reciprocal, and if it were confined to war materials. Price-fixing was attempted only in those industries where abnormal shortages threatened a runaway market;[40] and in the beginning it was concerned only with prices of basic materials at the source of production, although toward the close prices were being fixed from the raw stocks through all the middlemen to the ultimate consumer.

Nearly all the price schedules were arrived at by a process of negotiation and agreement between the business men and the government.[41] The price-fixing committee of the Board in its final form was really an independent body responsible to the President and only three of its nine members were also members of the Board.

[39] That the price was fixed at this level was not a justification of the economic theory that normally the cost of the marginal producer determines price, for it was due solely to the necessity of maintaining the output. Taussig, *supra* note 36, pp. 222–228.

[40] "The action of the committee in every case had its origin in the circumstance that government purchases were on a great scale and threatened to disturb market prices. The extension of the function of the committee to the regulation of prices for the public was, if not an afterthought, at all events not among the things contemplated at the start. The committee stepped in when government purchases threatened to upset the market, but soon found itself compelled to protect the public also." *Id.* at p. 210.

[41] "The prices fixed were in all cases reached by agreement with the representatives of the several industries. In strictness, they were agreed prices rather than fixed prices. The agreements were usually reached in cordial coöperation with the producers concerned, and thus were in reality voluntary. There were cases, however, in which they were agreements only in name. The representatives of some industries, though they accepted them, did so virtually under duress. In these cases the committee to all intents and purposes decreed prices and was enabled to impose them, under the form of agreements, by a more or less veiled threat of commandeering, and also by the certainty that public opinion would condemn those who failed to accede." *Id.* at p. 209.

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None of the committee had a personal financial interest in any result of the committee's recommendations.[42] Prior to the final hearing, the Federal Trade Commission would assign accountants to make a study of the industry and report on the costs of production, the Board or a commodity section would hold hearings with the War Service Committee and other representatives of the trade, and the industry itself would prepare its case. All the interests then appeared before the price-fixing committee, which acted in a quasi-judicial capacity; and when an agreement on the schedule was reached, it was transmitted to the President for his approval and then promulgated by him.

A good deal of the price-fixing was under way, however, before the price-fixing committee of the Board was formed. In the iron and steel industry, the instability of the market had led the producers themselves to ask for government control,[43] and conferences had been held throughout the summer of 1917. When the sixty-five leading iron and steel executives met in Washington on September 21, the Board had already agreed that prices should be separately fixed on ore, coal, coke, pig iron, and transportation; and that if the industry would not coöperate, the Board would begin to take over the plants. After much discussion and disagreement, a schedule of basic prices was prepared by the industry, revised by the Board, and promulgated by the President on September 24. Schedules for intermediate products were fixed on October 11, and the industry itself, acting through the American Iron and Steel Institute, prepared the schedules of differentials—variations from the basic types. Similarly, on September 21 an agreement had been reached as to the price for copper, which was second only to steel in war importance. The price index number for all metals dropped from 333 in July to 313 in August, 283 in September, 228 in October, 209 in November, and stayed between 208 and 216 from November, 1917, until the end of 1918.[44]

Although the schedules were in a sense voluntary, they were backed by ample authority. As well as the weapon of priority and preference control already mentioned, Congress had given the Executive sweeping powers of requisitioning goods for war purposes, with the power to ascertain and pay reasonable prices therefor. And

[42] *Final Report*, p. 78. [43] *Id.*, p. 115.
[44] Garrett, *op. cit.*, note 37 above, at p. 27.

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in the event of non-compliance, the President was empowered to commandeer any plant on the payment of just compensation.[45]

Most of the schedules were effective for three months only, and were subject to renewal or revision on a showing of injustice. The price term in contracts made before the announcement of a schedule was not to be affected by it unless so provided in the contract, but contracts made after a price announcement for delivery during its life were subject to it, and if for delivery after expiration of the schedule, were subject to such prices as might be set in a new or modified schedule to cover that future period. The manufacturer's agreement to the price schedule also included agreements that wages would not be reduced nor production diminished. Although the prices were set as maximums, they usually became the standard, because they were adopted only when there was danger of a runaway market, and usually they were the minimum prices at which all the plants of an industry could produce. If the price fell below, as it did in the zinc and lumber industries, the maximum was lowered accordingly.[46]

Apparently the price policies of the Board succeeded to some extent in stabilizing the markets. The price index figures for the average of all commodities show a steady and rather uniform rise up to the time of our entrance into the war, then a sharp jump upwards from April through July, falling prices for the rest of the year, then a gradual rise for the first part of 1918, and a period of relative stability during the latter half of 1918.[47] Undoubtedly price-fixing and priorities were the two most significant aspects of the Board's work, and it has been pointed out that the two worked necessarily hand-in-hand. Price-fixing removes the force that normally determines the distribution of goods, and priorities furnished a substitute. Likewise, priorities helped to stabilize prices by lessening the pressure of the abnormal demands. Neither could have worked satisfactorily without the other.

III. LEGAL BASIS

The legal status of the War Industries Board was somewhat anomalous, in view of the far-reaching control it exerted over every phase of industry. No legislation ever made specific provision for it,

[45] See note 41 above. [46] Taussig, note 36 above, at p. 214.
[47] See chart in *supra* note 37.

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although during the summer of 1918 bills giving the Board larger legal powers were prepared and discussed in congressional committees.[48] The general conclusion appears to have been that the Board was doing all right with the authority that it had, and there was perhaps the fear of fettering it too closely if its powers were strictly defined.

Originally, the Board was only a subordinate body to the Council of National Defense, which itself had merely advisory powers under the act of August 29, 1916.[49] With no administrative power, the basis for the first priority and price-fixing rulings and the programs for increased production was purely in the voluntary agreements of the industries. The Overman Act,[50] which ratified the President's reorganization of the Board as an executive agency, empowering him to redistribute the executive functions relating to war as he might deem necessary, made it possible for the Board to draw on all the powers that Congress conferred on any executive branch. Through that transference, it had access to broad powers of requisitioning goods for the government, determining the prices the government would pay, and commandeering the plants in the event of non-compliance. Likewise, specific statutes had given the President power to determine the priority of all car service, control the distribution of coal and coke, and require that government orders for war supplies take preference over all others.

The National Defense Act of June 3, 1916,[51] empowered the President to place orders with any firm for such product as might be required for the national defense which is of the kind usually produced or capable of being produced by that firm. Compliance with such orders was obligatory, and the orders were to take precedence over all others. If any plant refused to supply the goods as ordered, at a reasonable price as determined by the Secretary of War, then the President was authorized to take immediate possession of the plant and to manufacture such material as was required. Substantially similar provisions were incorporated into the Naval Emer-

[48] *Final Report*, p. 27. The only such proposal to reach the floor of Congress was a resolution (Sen. Joint Res. 181, 65th Cong., 2d Sess.) authorizing the Board to aid in equipping and expanding power plants for the manufacture of munitions and the construction of ships and to advance money to private owners. The resolution was reported from the Committee on Commerce and placed on the calendar. 56 *Cong. Rec.* 11513.

[49] 39 Stat. 649 (1916).

[50] 40 Stat. 556 (1918).

[51] 39 Stat. 213 (1916).

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gency Fund Act of March 4, 1917,[52] the Deficiency Appropriation Act of June 15, 1917,[53] and the Navy Appropriation Act of July 1, 1918,[54] with the additional authorization to the President to modify or cancel any contract for war material, and if the contractor refused to comply, to take over the plant; to require the owner to place at the disposal of the United States the whole or any part of his output, to be delivered in such quantities and at such reasonable prices as might be determined by the President; and to requisition and take over any plant for the use of the government, even if the owner had complied with the government's wishes in every respect.

The Food and Fuel Control Act of August 10, 1917,[55] authorized the President to requisition foods, feeds, fuels, and other supplies necessary to the Army or Navy, or any other public use connected with defense, as well as storage facilities for such goods, and also gave him the power to requisition any plant in which such goods were or might be produced. He was empowered to fix the prices of foods, feeds, and fuels; and as to coal and coke, he had specific authorization to regulate production, sale, distribution, storage, and apportionment, as well as power to requisition any plant where the producer should neglect to comply.

Thus there was ample statutory power in the Executive to requisition goods, determine their prices, demand preferential treatment, and commandeer plants as a last resort, as well as his broad powers as commander-in-chief of the armed forces. Although the work of the Food and Fuel Act was intrusted to the separate Food and Fuel Administrations, their control over coal and coke brought them into close contact with the industrial programs of the War Industries Board, and helped to make those programs possible. The other major source of power was in the control of the President over transportation.

The Navy Appropriation Act of August 29, 1916,[56] had provided that in time of war, preference and precedence should, upon demand of the President, be given over all other traffic for the transportation of troops and war materials. The Army Appropriation Act of the same date[57] empowered the President through the Secretary of War to take possession of any or all transportation sys-

[52] 39 Stat. 1193 (1917). [53] 40 Stat. 182 (1917).
[54] 40 Stat. 720 (1918). [55] 40 Stat. 276 (1917).
[56] 39 Stat. 604 (1916). [57] 39 Stat 649 (1916).

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tems for the transfer of troops or war materials or for such other purposes connected with the emergency as might be needful or desirable. The Esch Car Service Act of May 29, 1917,[58] gave the Interstate Commerce Commission summary power to suspend all rules, regulations, and practices and to make such orders as were deemed necessary to the public interest. And finally, the Preferential Shipments Act of August 10, 1917,[59] authorized the President, if he found it necessary, to direct that such traffic or shipments as in his judgment might be essential to the national defense should have preference or priority in transportation by any common carrier. He might make the orders directly, or through the Interstate Commerce Commission, or through any other person designated by himself. Actual possession of the railroads was taken by the President on December 26, 1917, and thereafter, of course, government control of transportation was complete. That control was important for our purposes here in the same way that the control over fuel was important—the Railroad Administration coöperated with the Board to the extent that if the manufacturers did not follow the Board's regulations, they might find themselves without either fuel or transportation.

To recapitulate briefly, the basic features of the Board's work were priority control and price-fixing. In the field of priorities, government orders were by statute entitled to preference; and for civilian orders the statutory control over transportation and the distribution of fuel compelled the manufacturers to give such preferences as the Board decreed. In the field of price-fixing, the executive departments could determine what prices they would pay for government purchases of war materials; and for other orders the control over priorities enabled the government to exact agreements from manufacturers that the government price schedules would be extended to civilian and Allied purchases as well. Constantly in the background of both functions hung the threat of commandeering the plants if the operators refused to comply, although in fact commandeering was rarely resorted to.

The power of Congress to direct commandeering was clearly resident in the legislative power of eminent domain,[60] and as an im-

[58] 40 Stat. 101 (1917). [59] 40 Stat. 272 (1917).

[60] Monongahela Navigation Co. v. United States, 148 U. S. 312 (1893) (private lock and dam condemned by the United States). That the power of eminent domain is legislative, see Nichols, *Law of Eminent Domain* (2d ed., 1917), I. p. 63, sec. 19.

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plied adjunct to the war powers[61] found in the authorization to declare war and to raise and support the army and navy.[62] Powers of eminent domain may be delegated to a private body,[63] so there is no doubt that a delegation to a government agency is proper. In addition, the President himself might have some power of compulsory requisitioning as commander-in-chief of the army and navy.[64]

At first, there was a conflcit between the commandeering powers of the Army, the Navy, and the Emergency Fleet Corporation, each of which had been given full power. But the control was centralized in the Priorities Division by a presidential ruling that no commandeering order should be issued without approval of the chairman of the Board, as represented by the chief of the Priorities Division, and the representatives of the Army and Navy. A commandeering committee was set up to determine the question of just compensation.

Since the question of just compensation is a judicial one,[65] the executive determination was not final, and there was always access to the courts. A common provision in the requisitioning statutes was that if any seller was dissatisfied with the price set by the gov-

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In the cases cited below, note 70, involving the measure of compensation under the Lever Act, the validity of mandatory government requisitions was necessarily assumed.

[61] In *The Federalist* (Sesquicentennial ed., 1937), no. 23, p. 142, Hamilton argues that war powers should be unlimited because of the impossibility of forseeing national exigencies. Under the doctrine of implied powers as set forth in McCulloch v. Maryland, 4 Wheat. 316 (1819), all means not prohibited by the Constitution are available for a legitimate end—in this case the prosecution of the war—if the means are plainly adapted to the end. In *Ex parte* Milligan, 4 Wall. 2, 139 (1866), it was stated that congressional power to provide for carrying on war necessarily extends to all legislation essential to the prosecution of the war with vigor and success, except such as interferes with the command and conduct of the forces, the latter being executive in nature. This must be qualified by the statement in United States v. Cohen Grocery Co., 255 U. S. 81, 88 (1921), that war does not suspend the constitutional guaranties. In this case, the assurance that the commandeered goods are for a public purpose, and the payment of just compensation, properly ascertained, fulfill the constitutional requirements.

[62] U. S. Constitution, Art. I, Sec. 8.

[63] Mt. Vernon Cotton Co. v. Alabama Power Co., 240 U. S. 30 (1916); Union Lime Co. v. Chicago & N. W. Ry. Co., 233 U. S. 211 (1914).

[64] See United States v. McFarland, 15 F(2d) 823, 826 (C.C.A., 1927).

[65] Monongahela Navigation Co. v. United States, 148 U.S. 312 (1893); United States v. National City Bank of New York, 275 Fed. 855 (D.C. S.D. N.Y., 1921) affmd. 281 Fed. 754 (C.C.A. 2d, 1922); United States v. New River Collieries Co., 262 U.S. 341 (1923); United States v. McFarland, 15 F(2d) 823 (C.C.A., Md., 1927).

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ernment, he could take seventy-five per cent of that price and sue the government for as much more as he thought himself entitled to, leaving the final determination to the courts.[66] The measure of just compensation raised an important question, since the usual rule in eminent domain proceedings is that the measure is market value;[67] but under the rule as to "hold-up prices," the condemnation value is not to be enhanced because of the buyer's urgent need.[68] In this case, the market value was largely created by the abnormal demand of the government, and for that reason the Board felt that it was not a fair test of compensation. Instead, they adopted as a measure the cost of production plus a reasonable profit.

Although counsel argued that there was no real market, and hence no true market value, the courts, however, in a series of cases under the Lever Food and Fuel Control Act,[69] rejected a standard of cost plus profit, and held that the existing market prices must be used as the basis for just compensation in spite of the abnormal conditions.[70] This would seem to indicate that the prices fixed by the War Industries Board were upon an incorrect basis and possibly confiscatory, unless they were validated by the element of agreement. And since most of the Board's work was accomplished by "agreements" with the parties concerned, the question naturally arises whether those agreements were valid as contracts.

The validity of the agreements for regulating the wool industry was tested in a series of cases in which the government attempted to collect excess profits from the wool dealers. The regulations[71] were designed to eliminate profiteering, and allowed the dealers a maximum gross profit, any excess to be forfeited to the government for redistribution among the producers. The dealers agreed to the

[66] 39 Stat. 1193 (1917) (50%); 40 Stat. 183 (1917) (75%); 40 Stat. 279 (1917) (75%); 40 Stat. 720 (1918) (75%).

[67] Orgel, *Valuation Under Eminent Domain* (1936), Sec. 16 and cases cited thereunder. [68] *Id.*, Sec. 22 and cases cited thereunder.

[69] 40 Stat. 276 (1917).

[70] United States v. New River Collieries Co., 262 U.S. 341 (1923); Vogelstein v. United States, 262 U.S. 337 (1923); Davis v. Newton Coal Co., 267 U.S. 292 (1925); C. G. Blake Co. v. United States, 275 Fed. 861 (D.C. Ohio, 1921) affmd. 279 Fed. 71 (C.C.A. 6th, 1922); United States v. National City Bank of New York, 275 Fed. 855 (D.C. N.Y., 1921) affmd. 281 Fed. 754 (C.C.A. 2d, 1922); Prince Line Ltd. v. United States, 283 Fed. 535 (1922). But see E. I. DuPont DeNemours & Co. v. Hughes, 50 F(2d) 821 (C.C.A. 3rd, 1931); Highland v. Russell Car Co., 279 U.S. 253, 262 (1929).

[71] Government Regulations for Handling Wool Clip of 1918, *Final Report*, p. 383.

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regulations as a condition of obtaining a license, without which they could not do business. On dissolution of the Board, the function of collecting the excess profits was turned over to the Bureau of Markets, and an appropriation was made for that purpose.[72]

In each of the first four cases to come up—United States v. Powers,[73] United States v. Gordin,[74] United States v. Traugott Schmidt & Sons,[75] and United States v. Smith[76]—the defendant's demurrer to the declaration was overruled on the ground that the agreement was voluntary and binding on the dealer. In the Powers and Gordin cases, the court held that the action of Congress in appropriating money for continuing the work of the Wool Division was a ratification of the regulations. In the Gordin case, however, the government recovered only nominal damages of one dollar. In the Schmidt case, the defendant was held estopped to deny the validity of the regulations; and in the Smith case, the court expressed the opinion that redistribution of the profits among the growers would be illegal, but that the question was not open on demurrer.

In United States v. McFarland,[77] in 1926, the Court of Appeals for the Fourth Circuit made an elaborate study of conditions in the wool industry during the war and the work of the War Industries Board, and came to the conclusion on the merits that the regulations of the Board were unauthorized and had not been ratified by Congress. While the court conceded that a promise to return the excess profits to the government would have been binding, there was no signed agreement in the case, and the court held that the dealer's actions in proceeding under the regulations did not imply his consent or estop him from refusing to comply. The court went on to find that the forfeiture of excess profits was in the nature of a penalty and hence invalid, and that therefore an agreement or a ratification would be immaterial since one cannot by agreement subject himself to the payment of a penalty for something he may thereafter do, and Congress cannot ratify the imposition of a penalty after the act to be penalized has been committed. *Certiorari* was

[72] 41 Stat. 267 (1919), reënacted substantially the same in succeeding years.

[73] 274 Fed. 131 (D.C. Mich. 1921).

[74] 287 Fed. 565 (D.C. Ohio, 1922) affmd. on procedural question, 9 F(2d) 394 (C.C.A. 6th, 1925).

[75] 2 F(2d) 290 (D.C. Mich., 1924).

[76] 285 Fed. 751 (D.C. Mass., 1923). 32 F(2d) 901 (1929) affmd. 39 F(2d). 851 (C.C.A., 1st, 1930).

[77] 15 F(2d) 823 (C.C.A. Md., 1926) cert.; granted 273 U.S. 688 (1927), revoked, 275 U.S. 485 (1927).

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granted to the Supreme Court[78] and then revoked[79] when the government admitted on argument that the regulations by themselves were without force.[80]

Following the McFarland case, the Smith case came back for trial (the defendant's demurrer having been overruled), and the Court of Appeals for the First Circuit likewise held the regulations of the Board invalid.[81] The McFarland case was subsequently followed in United States v. Avery,[82] where there was no signed agreement, the court holding that an agreement would be immaterial in view of the penal nature of the forfeiture.

In United States v. Kraus,[83] the Court of Appeals of the Seventh Circuit overruled the defendant's demurrer, distinguishing the McFarland case on the ground that here the dealer had actually signed an express agreement to abide by the regulations. The question of the penal character of the forfeiture was not mentioned by the court, but the regulations were said to be within the Board's authority, and the Board was characterized as an agent of the President, and the dealers as agents of the government.

In United States v. McMurtry,[84] there was also an express agreement signed by the defendant. The agreement was held to be valid, not being made under duress, but it was held to bind him to comply only with the valid regulations; and since the Smith and McFarland cases had held that the requirement that excess profits be forfeited was invalid, the agreement did not extend to that provision.

Thus the weight of authority seems to be that the Board's regulations as to the forfeiture of excess profits in the wool industry were unauthorized and invalid. But the courts regarded the agreements as binding contracts, requiring the dealers to comply with such of the regulations as were valid. Questions of duress and compulsion, lack of mutuality, and lack of authority to contract were presented, but the courts seemed willing to uphold the agreements.

While the forfeiture of excess profits was invalid, the Board's price-fixing agreements were apparently upheld in Vogelstein v.

[78] 273 U.S. 688 (1927). [79] 275 U.S. 485 (1927).
[80] See statement in U.S. v. Smith, 39 F(2d), at p. 858.
[81] 32 F(2d) 901 (1929), affmd. 39 F(2d) 851 (C.C.A. 1st, 1930).
[82] 30 F(2d) 728 (D.C. N.Y., 1927).
[83] 33 F(2d) 406 (C.C.A. 7th, 1929).
[84] 48 F(2d) 258 (D.C. N.Y., 1930).

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United States,[85] where the price of copper had been fixed by agreement between the producers and the Board, and the court held that since that was the prevailing market price, it must be used as the measure of just compensation.

While there was a surprisingly small amount of litigation testing the validity of the Board's far-reaching control, it is evident that the legal foundation was rather tenuous and never clearly defined. It was accepted because in the stress of national emergency the Board was doing an important job and doing it well, rather than because of any technical authority. The wool cases probed the defective authority because they arose after the emergency had passed. And even in those cases where the Board's regulations were invalidated, the courts uniformly expressed admiration for the way the Board had performed its function.

IV. CONCLUSION

This examination of the War Industries Board has indicated that the industrial control during the last war was very much *ad hoc*—developed in response to immediate needs, without a predetermined and comprehensive plan. The effort was to refrain from interference except where absolutely necessary, and where necessary, to accomplish the purpose with as little change in the normal business structure as possible. To this end, at the close of the war, the Board withdrew from the scene as quickly as the necessary readjustments could be made, being officially dissolved on November 30, 1918, by the resignation of the chairman. Thus its effective life was only some nine months, although during that time a control was achieved hardly less than that of a totalitarian state.

With its final report, the Board submitted a set of recommendations looking toward a similar future situation. Briefly, the plan was for a skeleton staff maintaining the rudimentary organization of the Board, a skeleton munitions industry ready to expand on short notice, and subsidization of home production of necessary raw materials. None of the suggestions was followed.[86] In 1930, a War Policies Commission was appointed, and it reported in 1932[87] recommending a constitutional amendment to eliminate all doubt of the power of Congress to prevent profiteering and to stabilize

[85] 262 U.S. 337 (1923). [86] See *Time* magazine, June 3, 1940, p. 65.
[87] House Doc. 264, 72d Cong., 1st Sess. (1932).

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prices in time of war, with a scheme of legislation pending the adoption of such an amendment. At the Commission's hearings, the War Department submitted a proposed plan for industrial mobilization, and after the report, this plan was revised.[88] A joint Munitions Board of the War and Navy Departments has been constantly studying the national resources for munitions manufacture, and on October 2, 1939, it was revealed by the War Department that over 10,000 plants had been given sealed orders to be opened in the event of war.[89] The War Resources Board in the fall of 1939 and the National Defense Commission appointed in June, 1940, have been mentioned above.[90]

The result of all this activity must be that in the event of war the organizational plans will have been well prepared in advance; and with the experience of the War Industries Board as a guide, the initial difficulties encountered by it should be largely avoided. This will mean that control will begin at an even more advanced stage than it reached in 1918; and the permanent after-effects on industry would consequently be more far-reaching.

[88] Sen. Com. Print No. 2, 74th Cong., 1st Sess. (1933).
[89] *N. Y. Times* Oct. 2, p. 2, col. 8 (1939). [90] See note 4 above.

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THE LEGAL STATUS OF AMERICAN POLITICAL PARTIES, II

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Political parties that cannot meet the requirements set up by statute for participation in the direct primary, or for the holding of legal conventions, are authorized in most states to choose their candidates by an alternative method. The statutory provisions on this matter vary widely. Some states follow a liberal policy, making it relatively easy for small parties to get a place on the ballot with their candidates' names identified by the party name or emblem. A few states follow a different policy, and make it difficult for small parties to put forward their candidates and allow no distinction upon the ballot between independent candidates and the candidates of small parties.

The forty-eight states may be divided into several classes as respects their statutory provisions for the nomination of candidates by new political parties and small parties which cannot meet the statutory definition of a political party:

1. States prescribing no minimum size for a political party to participate in the favored method of nomination, whether convention or direct primary—six states.[88] In these states, new and small parties are in the most favored position. In the matter of nominating candidates and gaining a place on the general election ballot, they are accorded equal treatment with parties of long standing and substantial size.

2. States authorizing new and small parties to nominate candidates and gain a place on the ballot by petition—nineteen states.[89]

[88] Arkansas, Georgia, Kansas, Mississippi, New Mexico, and South Carolina.

[89] Arizona *Rev. Code*, 1928, Sec. 1293; California *Pol. Code* (Deering), 1937, Sec. 1188; Colorado *Sess. Laws*, 1937, Ch. 142, Sec. 8; Connecticut *Gen. Stat. Supp.*, 1935, Sec. 166 (c); Delaware *Rev. Code*, 1935, Secs. 1810, 1811; Illinois *Rev. Stat.*, 1937, Ch. 46, Sec. 291; Louisiana *Gen. Stat.*, 1932, Secs. 2755, 2757, 2760; Maine *Rev. Stat.*, 1930, Ch. 7, Secs. 1, 32, Ch. 8, Sec. 2; Minnesota *Sess. Laws*, 1939, Ch. 345, Pt. 3, Ch. 1, Sec. 2, Ch. 3, Secs. 1, 2, 11; Missouri *Rev. Stat.*, 1929, Sec. 10241; New Hampshire *Pub. Laws*, 1925, Ch. 25, Secs. 57, 59; New Jersey *Rev. Stat.*, 1937, Tit. 19, Ch. 13, Secs. 1, 4, 5, 22, Tit. 19, Ch. 14, Secs. 6, 10; New York *Consol. Laws Supp.* (McKinney), 1938, Bk. 17, Sec. 137; North Carolina *Code* (Michie), 1935, Sec. 5913; Ohio *Gen. Code* (Page), 1938, Secs. 4785–3, 91, 99, 100; Oklahoma *Stat.* (Harlow), 1931, Secs. 5650, 5714, 5721; Oregon *Code Supp.*, 1935, Sec. 36–1004, *Sess. Laws*, 1937, Ch. 93, Secs. 1, 2; Pennsylvania *Stat.* (Purdon), 1938, Tit. 25, Secs. 2831 (c), 2911, 2912, 2963; Rhode Island *Gen. Laws*, 1938, Ch. 317, Secs. 5, 12.

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This is the largest group. In most of them, new and small parties can gain a place on the ballot relatively easily, but in some of them requirements for petitions are onerous. The number of signatures required for the nominating petition varies widely from 500 in Colorado to 25,000 in Illinois (distributed so that there shall be at least 200 in each of fifty counties) and from one half of one per cent of the total vote for a state-wide office in the last election in Pennsylvania to five per cent in California. There are also many requirements as to the time of filing and the form of petitions, which impose formidable barriers in the way of new and small parties trying to gain places on the ballots.

3. States authorizing new and small parties to nominate candidates and gain a place on the ballot by the convention method—five states.[90] In these, political parties that cannot qualify for participation in the direct primary may hold conventions and certify their candidates to the public officer or officers charged with the preparation of the ballots. The convention method includes caucuses for the nomination of candidates for local offices. These provisions, of course, mean reasonably smooth sailing for new and small parties.

4. States authorizing new and small parties to nominate candidates and gain a place on the ballot either by petition or convention—four states.[91] In these, the statutes offer the two methods, and the party may choose which method better suits its purpose.

5. States requiring these two methods together—two states. In Kentucky, a new or small party may hold a convention or a primary at its own expense, and file its candidates for state-wide offices by a petition of 100 voters.[92] In Utah, such a party may hold a convention and qualify its candidates by filing a petition of 500 names.[93]

6. States authorizing new and small parties to nominate candidates and gain a place on the ballot by convention or primary held at the expense of the party, provided the party polled a certain

[90] Alabama *Code Supp.*, 1936, Sec. 462; Idaho *Code*, 1932, Sec. 33–639; Michigan *Comp. Laws*, 1929, Sec. 3063; Tennessee *Code* (Williams), Sec. 2046; Washington *Rev. Stat. Supp.* (Remington), 1937, Secs. 5167, 5170, 5203, 5274.

[91] Iowa *Code* (Whitney), 1935, Secs. 528, 655-a1, 655–a17; Montana *Rev. Codes*, 1935, Secs. 612, 613, 615, 639; West Virginia *Code* (Michie), 1937, Secs. 91–93; Wyoming *Rev. Stat.*, 1931, Secs. 36–501, 36–508, 36–509, 36–510, 36–640, 36–641, 36–1005.

[92] Kentucky *Stat.* (Carroll-Baldwin), 1936, Secs. 1453, 1550–1e.

[93] Utah *Rev. Stat. Supp.*, 1939, Sec. 25–4–3 (g) (2), 25–6–5.

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minimum of votes in the last election; otherwise, to nominate by petition—four states.[94] In Indiana, a party may nominate candidates in its own convention or primary, provided it polled one half of one per cent of the votes in the last election; in Maryland, by convention or primary, provided it polled one per cent of the votes in the last election; in Massachusetts, by caucus or convention, provided it polled 1,000 votes in the last election; and in Vermont, by convention, provided it polled one per cent of the vote in the last election.

7. States permitting parties to qualify for participation in the direct primary on a basis other than the vote cast in the last election, but not allowing partisan nominations under any other conditions—four states.[95] In these, the direct primary is the exclusive method of making partisan nominations. If a party cannot meet the provisions for admission to the direct primary—and they are quite difficult to meet in all these states except Nebraska—or if it comes into existence after the primary election, it can only nominate its candidates by petition as independents. Presumably, the votes cast for their candidates as independents might be counted in order to gain recognition for the next primary election, but the whole arrangement can hardly be regarded as favorable treatment for small political parties which are struggling for popular support.

8. States making no provisions for the nomination of candidates by new and small parties—four states (Florida, North Dakota, Texas, and Virginia). In these states, new and small parties may nominate their candidates only as independents. Indeed, in Florida there is no provision for the nomination of independent candidates, and hence there is no way in which new and small parties can get their candidates' names printed on the official ballots. The only available procedure is to write in the candidates' names in blank spaces provided. A new or small party may, however, certify the names of its candidates to the secretary of state, and votes cast for them as "write-in" candidates are credited to the party for pos-

[94] Indiana *Stat.* (Burns), 1933, Sec. 29–1003; Maryland *Code*, 1924, Art. 33, Secs. 49, 51, 63; Massachusetts *Laws* (Michie), 1933, Ch. 53, Secs. 1, 6, 8; Vermont *Pub. Laws*, 1933, Secs. 157, 158, 179, 180, 181, 182, 221.

[95] Nebraska *Comp. Stat.*, 1929, Secs. 1135, 1136, 1137; Nevada *Comp. Laws* (Hillyer), 1929, Secs. 2404 (g), 2405 (2), 2435; South Dakota *Comp. Laws*, 1929, Secs. 7096-A, 7241, *Sess. Laws*, 1933, Ch. 102; Wisconsin *Stat.*, 1937, Secs. 5.02, 5.05 (6) (e), 5.26, 6.23. Cf. *supra* at footnotes 75–81.

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sible recognition in the next election.[96] In North Dakota, parties not able to meet the statutory minimum of five per cent of the votes cast in the last election cannot make nominations as parties. They may nominate their candidates by petition only, for which the requirements are relatively easy (300 signers for a state-wide office); but in that case the candidates are designated "individual nominations" on the official ballot.[97] Texas makes provision for parties that polled as few as 10,000 votes in the last election, but no provision for smaller or new parties. Such parties may nominate candidates only as independents by a petition signed by voters equal to one per cent of the total vote cast in the last election.[98] In Virginia, the failure to provide a method of nomination for small parties is not so serious, for the requirements for a petition are simple (250 signers for a state-wide office); and since there is no party designation of any candidates on the ballots, independent candidates are on an equal footing with party candidates.[99]

Special mention must be made of the provisions of the election laws of Arkansas, Delaware, and Tennessee designed to bar "un-American" parties from the ballot.[100] These statutes say, in almost identical language:

> No political party, individual or candidate of any group shall be recognized and given a place on the ballot which advocates the overthrow by force or violence, or which advocates or carries on a program of sedition or of treason by radio, speech, or press, of our local, state, or national government. No newly organized political party shall be represented on the ballot until it has filed an affidavit by its officers, under oath, that it does not advocate the overthrow of local, state, or national government by force or violence, and that it is not affiliated in any way with any political party or organization, or subdivisions of organizations, which do advocate such a policy by radio, speech, or press.

Such provisions do not openly proscribe any political parties, but they are doubtless intended to have that effect. They do not, in a strict sense, interfere with the inherent right of the people to form political parties, as the parties might exist without being able to place their candidates' names on the ballots. Further, these pro-

[96] State *ex rel.* Barnett v. Gray (1932), 107 Florida 73, 144 So. 349.

[97] North Dakota *Comp. Laws Supp.*, 1925, Secs. 959, 971a.

[98] Texas *Stat.* (Vernon), 1936, Arts. 2978, 2980, 3154, 3155, 3159.

[99] Virginia *Code*, 1936, Sec. 154.

[100] Arkansas *Stat.* (Pope), 1937, Sec. 4738; Delaware *Rev. Code*, 1935, Sec. 1810; Tennessee *Code Supp.* (Williams), 1938, Sec. 2045.1. The passage is quoted from the Tennessee *Code.*

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visions do not, in a strict sense, deny the inherent right of political parties to make nominations. A party might go ahead and make nominations, although banned from the ballot. Presumably, "un-American" parties in the states having this provision are reduced to the position of all small parties in Florida. It would appear that they might nominate their candidates, and write their names on the ballots in the blank spaces usually provided.

Another consideration is whether the names of the candidates of new and small parties are printed on the ballots with party designation.[101] The states that make provision for such nominations are quite liberal as respects the matter of party designation on the ballots. It appears that all of them except California allow such candidates to be designated by the party name, or the party name and emblem. Five states specifically require that the candidates of parties falling below the official minimum be designated also as "nominated by petition," or some equivalent phraseology.[102] This brands the party as one not yet well established, and warns the voter that the candidates have been chosen by a means which does not, according to prevailing standards, guarantee that they are the choice of a majority of the party membership. In Wisconsin and Wyoming, the candidates of the smallest political parties appear in the independent column, but may carry also the party designation indicated in the nominating petition—a curious contradiction in terminology.[103]

In some states, new and small parties suffer penalties arising also from an unfavorable position on the ballot. If the party-column ballot is used, the column of a new or small party usually follows those of the parties which have previously qualified. If the office-block ballot is used, the names of candidates are sometimes arranged to the possible disadvantage of new and small parties.

To conclude on the subject of nominations, it may be observed that a scrutiny of the existing legislation does not reveal any state which makes an outright prohibition of nominations by small political parties. To this extent, the state legislatures recognize an in-

[101] See generally on this subject Schafer v. Whipple (1898), 25 Colo. 400, 55 Pac. 180.

[102] Louisiana *Gen. Stat.* (Dart), 1932, Sec. 2760; Maryland *Code*, 1924, Art. 33, Sec. 63; Minnesota *Sess. Laws*, 1939, Ch. 345, Tit. 3, Ch. 3, Sec. 11; New Hampshire *Pub. Laws*, 1925, Ch. 26, Sec. 3; New Jersey *Rev. Stat.*, 1937, Sec. 19: 14–6.

[103] Wisconsin *Stat.*, 1937, Sec. 6.23 (4); Wyoming *Rev. Stat.*, 1931, Sec. 36–1005.

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herent right in all political parties to nominate candidates. On the other hand, a number of states place so many impediments in the way of small parties that their right to nominate candidates is practically nullified. There is no sound reason for believing that such restrictive statutes are unconstitutional, as many of them have been enforced without question for a long time, and the Florida supreme court upheld the severest statute of all.

The subject of nominations also brings to a conclusion the discussion of the inherent rights of political parties. The courts have on a few occasions expressed themselves negatively as to rights and powers which political parties do not possess. It has been held that a political party has no power to limit the right of suffrage at a general election,[104] or to add to the qualifications for voting in primary elections as fixed in the statute.[105] A political party does not have the right to pass upon questions of eligibility to public office.[106] A political party does not have the right to dispense with a primary election as respects unopposed candidates for nomination.[107]

Numerous aspects of legislative regulation have been dealt with as an inseparable part of the subject of the rights and powers of political parties. Certain other phases of legislative control may be mentioned at this point.

Besides approving statutory tests of party membership for purposes of voting in the direct primary, the courts have generally upheld similar tests for candidates who seek the nomination of the party.[108] In this matter, the legislature lends the aid of the state to protect the party from impostors. The legislature may protect the party from having recent, and perhaps not real, converts as candidates for its nomination.[109] There is, however, no practicable way in which such statutory provisions may be enforced. A test for candidates requiring the individual to declare that he voted for the party's candidates in the last election, and intends to do the same

[104] Cunningham v. McDermett (Texas Court of Civil Appeals, 1926), 277 S.W. 218.

[105] Brown v. Cole (1907), 54 N.Y. Misc. 278, 104 N.Y. Supp. 109.

[106] Young v. Beckham; Meacham v. Young (1903), 115 Ky. 246, 72 S.W. 1092.

[107] State *ex rel.* Williams v. Everett (1912), 130 La. 35, 57 So. 576.

[108] Socialist Party v. Uhl (1909), 155 Cal. 776, 103 Pac. 181; Riter v. Douglas (1910), 32 Nev. 400, 109 Pac. 444; Francis v. Sturgill (1915), 163 Ky. 650, 174 S.W. 753; Smith v. Parish Executive Committee for Parish of Jefferson (1927), 164 La. 981, 115 So. 54; Love v. Taylor (Texas Court of Civil Appeals, 1928), 8 S.W. (2nd) 795.

[109] Heney v. Jordon (1918), 179 Cal. 24, 175 Pac. 402.

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in the ensuing election, cannot be interpreted as a pledge, but only as a declaration of present intentions, and cannot be enforced because of the secrecy of the ballot.[110] A court cannot question the truth of a candidate's sworn statement that he voted for a majority of the candidates of a certain party in the last election, even if he was a candidate in that election on behalf of another party, because there is no means of proving the contrary.[111]

Legislation to protect political parties from the misleading and unauthorized use of the established party names is a valid exercise of the police power.[112] Under such legislation, a party is protected from the appropriation by another organization of a common name of the party, as well as of the exact name as filed with the state authorities.[113] Unless the statute specifically prohibits the use by a new organization of any part of the name of an existing party, a new party may adopt part of another party's name, provided that it uses also some other distinguishing word or words.[114] There have been instances when, as a result of factional differences within party committees and clubs, some persons have attempted to gain possession of the party name by applying for articles of incorporation. Under proper circumstances, such unauthorized use by a corporation of the name of a pre-existing association is subject to restraint by injunction.[115] The unauthorized use of an individual's name as part of the designation of a political party is unlawful, and will be prohibited at the instance of such person.[116]

The legislature may authorize parties to adopt and file an emblem, and may protect each party in the continued use of its emblem. An emblem must, however, be recorded in the manner provided by the statute in order that the party may be protected from its appropriation by another organization.[117] If the legislature wishes to require all parties to select emblems for use on the bal-

[110] Swindall v. State Election Board (1934), 168 Okla. 97, 32 Pac. (2nd) 691.

[111] State *ex rel.* McMillan v. Schmahl (1918), 140 Minn. 220, 167 N.W. 797.

[112] Brown v. Jensen (1902), 86 Minn. 138, 90 N.W. 155; McBroom *et al.* v. Brown (1912), 53 Colo. 412, 127 Pac. 957.

[113] Porter *et al.* v. Flick *et al.* (1900), 60 Neb. 773, 84 N.W. 262.

[114] State *ex rel.* Spofford v. Gifford (1912), 22 Ida. 613, 126 Pac. 1060.

[115] Democratic Organization of County of Richmond v. Democratic Organization of County of Richmond, Inc. (1938), 253 N.Y. App. Div. 820, 1 N. Y. Supp. (2nd) 349.

[116] State *ex rel.* LaFollette v. Hinkle (1924), 131 Wash. 86, 229 Pac. 317.

[117] *In re* Fitzgerald (1906), 51 N.Y. Misc. 491, 100 N.Y. Supp. 753.

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lots, it must make the point clear; otherwise the statute is held to be merely permissive.[118] The original purpose of authorizing the use of party emblems on the ballots was to encourage straight party voting.[119]

It is probably correct to say that the general rule of American public law prohibiting the delegation of legislative power holds with reference to political parties, but decisions involving the point seem to be few in number. The legislature may recognize and regulate powers already possessed by the political party, but apparently no powers of a legislative nature may be granted. The difficulty remains, however, of determining what is a legislative power. It would be rash to say that the primary laws and other regulatory statutes have never resulted in the grant of new powers to political parties, but have merely recognized pre-existing powers. The contrary has quite certainly been the case with many aspects of the *modus operandi* of direct primaries. The legislatures have undoubtedly granted "power" to political parties, whether or not the "power" be legislative in character or grade.

In Nixon v. Condon,[120] the federal Supreme Court found a delegation of "state power" to a party committee, but did not base its decision upon that fact. Neither this nor any other white-primary case turned upon the question of delegation of legislative power. In the instant case, when the court decided that the party committee was in fact a state agency, the conclusion followed that it could not take action which was beyond the power of the legislature itself. In Grovey v. Townsend,[121] the implication was that the party convention was exercising an inherent power to determine the party membership; so there was no question of the grant of any power by the legislature.

An early primary election law was not invalid because it authorized party committees to fix the time and regulate other details of the primaries.[122] But a provision of a primary law authorizing party committees to choose delegates to party conventions when there

[118] Ogg v. Glover (1905), 72 Kan. 247, 83 Pac. 1039.

[119] Schafer v. Whipple (1898), 25 Colo. 400, 55 Pac. 180.

[120] (1932), 286 U.S. 73. See especially Mr. Justice Roberts's summary of this opinion in Grovey v. Townsend (1935), 295 U.S. 45, at p. 48.

[121] (1935), 295 U.S. 45.

[122] State *ex rel.* Webber v. Felton (1908), 77 Ohio St. 554, 84 N.E. 85.

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was not sufficient contest to warrant holding an election was unconstitutional because of the delegation of legislative power.[123]

Political parties are subject to the control, not only of the legislatures, but also of the courts. As a first step in the discussion of the subject of judicial control, it is necessary to state the view which the courts generally take of political parties. The courts usually consider political parties as falling in the classification of unincorporated non-profit associations.

Only one case is on record in which a state supreme court (that of California) held that a political party is a corporate body.[124] In this case, the court admitted that not a single instance could be found in the reported cases in which a political party had appeared as a party in legal proceedings, but it explained this fact by noting that the political party had only recently been recognized as a legal entity under the regulatory statutes. At any rate, the California court held that a political party is in all essential respects identical with other corporate bodies not organized for profit, and allowed a political party to appear as plaintiff. All the other cases in which a political party has appeared as a party in legal proceedings—only two in number—arose in the same jurisdiction.[125] Since all three of these cases arose thirty or more years ago, and since they have never been followed in any other jurisdiction, it seems correct to conclude that political parties are not in any proper sense corporate bodies. Thus, in the view of the courts, political parties have no legal personality. They have no existence apart from the individuals who compose them. Under the common-law rule, an unincorporated association cannot sue or be sued except by joining the names of all of its members as plaintiffs or defendants. This means that political parties cannot, as a practical proposition, appear as parties in legal proceedings.

The lack of corporate personality has other consequences. A po-

[123] Morrow v. Wipf (1908), 22 S.D. 146, 115 N.W. 1121. See also People *ex rel.* Breckton v. Board of Election Commissioners of the City of Chicago (1906), 221 Ill. 9, 77 N.E. 321, in which a primary law was declared unconstitutional because of the delegation of legislative power to party committees.

[124] Independence League (a political party) v. Taylor *et al.* (1908), 154 Cal. 179, 97 Pac. 303.

[125] Independence League v. Taylor (1909), 155 Cal. 294, 100 Pac. 860; Socialist Party (a political party), and Hagelstein (as chairman of the county committee, representing said party) v. Uhl *et al.*, Election Commissioners (1909), 155 Cal. 776, 103 Pac. 181.

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litical party may not receive bequests, and it may not own property nor enter into contracts. These disabilities have not, however, caused much difficulty in practice, because individuals, acting as representatives of political parties, may make valid contracts for goods and services and leases for premises. If a political party wishes to hold real property, it may appoint trustees and vest the title in them.[126] Individuals representing a political party may borrow money, or in other ways incur liabilities; but there is no way of holding the party liable on such obligations.

The executive committees of political parties are likewise generally treated as unincorporated non-profit associations. A New York court gave a definite ruling to this effect at a recent date,[127] but in an early case in the same state a party committee was spoken of as a "*quasi*-corporation."[128]

At common law, a party committee may sue or be sued only by joining the names of all its members as plaintiffs or defendants.[129] A statute may, however, alter this situation. In New York, a statute applying generally to unincorporated associations and authorizing suits by or against an association in the name of the president or treasurer has been held to permit making a party committee a defendant in the person of its chairman or treasurer,[130] and a plaintiff in the person of its treasurer.[131] In Louisiana, the parish executive committees of the political parties are invested with certain statutory powers respecting contests in the primary elections,

[126] When the British Conservative party received a bequest to establish a permanent residential college for party workers, the title to the property was vested in a board of trustees. See Bonar Law Memorial Trust v. Commissioners of Inland Revenue (King's Bench Division, 1933), 17 Tax Cas. 508, 77 S.J. 101, 49 T.L.R. 220.

[127] Saxer and Pfeiffer v. Democratic County Committee of Erie County (1936), 161 N.Y. Misc. 35, 291 N.Y. Supp. 18.

[128] People *ex rel.* Coffey v. Democratic Committee of Kings County (1900), 52 N.Y. App. Div. 170, 65 N.Y. Supp. 57; reversed in Same v. Same (1900), 164 N.Y. 347, 58 N.E. 124.

[129] County Democratic Committee, Bexar County, *et al.* v. Booker (1932), 122 Tex. 89, 52 S.W. (2nd) 908.

[130] McKane v. Adams (1890), 123 N.Y. 609, 25 N.E. 1057; Brown v. Cole (1907), 54 N.Y. Misc. 278, 104 N.Y. Supp. 109; Saxer and Pfeiffer v. Democratic County Committee of Erie County (1936), 161 N.Y. Misc. 35, 291 N.Y. Supp. 18.

[131] Democratic Organization of County of Richmond v. Democratic Organization of County of Richmond, Inc. (1938), 253 N. Y. App. Div. 820, 1 N.Y. Supp. (2nd) 349.

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and such a committee may be made a defendant in an appeal from its decision.[132]

The recorded cases in which party committees appear as plaintiffs or defendants, aside from those arising under statutory provisions in the two states mentioned, are few. Most of the suits involving political parties directly or indirectly are reduced, for presentation to the courts, to contests between individuals. Two cases may be cited in which a party committee was sued by making all its members defendants,[133] and one in which a party committee was permitted to sue by the method of having all its members appear as plaintiffs.[134] In a curious Kentucky case early in the century, two contending committees were allowed to appear in the persons of their respective chairmen and treasurers, because, as it was said, the other members were "so numerous as to make it impracticable to bring them all before the court within a reasonable time."[135]

The basic principle of judicial control of political parties, as professed by the judges in many opinions, is that the courts have no concern with the affairs of political parties as long as they are fairly and honestly administered according to the law, and no civil or property rights are threatened. "A court of equity will not undertake to supervise the acts and management of a political party for the protection of purely political rights."[136] According to this principle, the courts generally refuse to interfere with political parties, unless jurisdiction is conferred by statute, or unless the matter in dispute has been regulated by statute. This attitude of the courts is nicely illustrated by two cases that arose in New York, involving disputes within the same party committee, but separated by ten

[132] Brown v. Democratic Parish Executive Committee of St. Bernard Parish *et al.* (1935), 183 La. 967, 165 So. 167; Smith v. Parish Democratic Executive Committee for Parish of Jefferson (1927), 164 La. 981, 115 So. 54; Rousseau v. Democratic Parish Executive Committee for Parish of St. Martin (1935), 183 La. 965, 165 So. 166.

[133] Winnett v. Adams *et al.* (1904), 71 Neb. 817, 99 N.W. 681; Beene v. Waples (1916), 108 Tex. 140, 187 S.W. 191.

[134] Ney *et al.* v. Whitley *et al.* (1904), 26 R.I. 464, 59 A. 400.

[135] Davis v. Hambrick (1900), 109 Ky. 276, at p. 278, 58 S.W. 779. The case of White v. Democratic Executive Committee of Harris County (1932), 60 Fed. (2nd) 973, may belong in the same classification, for, while the committee is named as a party, it appears that only its chairman and secretary were required to respond.

[136] Macdonald v. Lyon (1906), 43 Tex. Civ. App. 484, at p. 487, 95 S.W. 67, at p. 68.

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years in time.[137] The earlier case, which involved the refusal by a party committee to admit as a member a person who had been elected according to the existing party rules, arose before there was any statute in New York regulating party organization. The court viewed the dispute as more or less a private matter, and denied any relief to the excluded member. The later case, which likewise involved the exclusion of a duly elected member of the party committee, arose after a statute regulating the manner of election of party committees had been enacted. Now the court assumed jurisdiction, held that the excluded member had legal rights which had been invaded, and granted the relief sought.[138]

The doctrine of political questions relieves the courts from embarrassing entanglements in the controversies that often arise within political parties. The courts simply refuse to assume jurisdiction unless required to do so by express statutory provisions, and they take action only to enforce by appropriate legal remedies the performance of the plainly ministerial duties of party agencies and to protect clearly defined legal rights.[139] The courts probably have the right to interfere in party affairs if fraud is involved, and in order to grant relief from oppressive and unreasonable action; but the complainant should ordinarily exhaust all the remedies available within the party organization before appealing to them.[140]

The courts are constantly on guard to avoid deciding the quarrels of contending factions of political parties. Factional struggles are most frequently presented to the courts as controversies about nominations in party primaries and conventions. Some of the early

[137] McKane v. Adams (1890), 123 N.Y. 609, 25 N.E. 1057; People *ex rel.* Coffey v. Democratic General Committee of Kings County (1900), 164 N.Y. 347, 58 N.E. 124.

[138] See also State *ex rel.* Merrill v. Gerow (1920), 79 Fla. 804, and Dastugue v. Cohen (1930), 14 La. App. 475, 131 So. 746, in which the courts as authorized by statutes inquired into the regularity of the election of party committeemen. In Raines v. Stone (1919), 112 S.C. 147, 99 S.E. 353, the court refused to make a similar inquiry on the ground that it was not so authorized by statute. In State *ex rel.* Kiel v. Riechmann (1911), 239 Mo. 81, 142 S.W. 304, it was held that the election of officers of a party committee was not reviewable by the court.

[139] See an excellent statement of this doctrine in Brown v. Costen (1918), 176 N.C. 63, 96 S.E. 659. Other decisions to the same effect are: Davis v. Hambrick (1900), 109 Ky. 276, 58 S.W. 779; Winnett v. Adams *et al.* (1904), 71 Neb. 817, 99 N.W. 681; State *ex rel.* Webber v. Felton (1908), 77 Ohio St. 554, 84 N.E. 85; Ferguson v. Montgomery (1921), 148 Ark. 83, 231 S.W. 30; Tuck v. Cotton (1927), 175 Ark. 409, 295 S.W. 613.

[140] State *ex rel.* Smith v. County Court (1916), 78 W.Va. 168, 88 S.E. 662.

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Australian ballot and primary laws failed to make provision for the settlement of controversies about nominations. In this situation, some courts refused to take jurisdiction, regarding such contests as purely political questions.[141] Other courts assumed jurisdiction as a necessity, since there was no other way to avoid confusion in printing the ballots.[142] In some early cases, the courts avoided making decisions in political disputes by ordering the inclusion in the ballots of the names of both contending candidates, or lists of candidates.[143] By this action, the question was referred to the ultimate political authority—the people. Later on, the principle that a party can make only one nomination for each office was generally established by statute, or assumed by the courts,[144] so that some method for deciding cases of contested nominations had to be provided.

It is now granted that the legislature may vest in the courts power to review contests regarding nominations,[145] but this is not the usual solution of the problem. More commonly the legislature establishes a special tribunal to serve as a canvassing board in matters of nominations. Without exception, the courts have welcomed such action on the part of the legislature, and they generally hold that such action is not a delegation of judicial power to a non-judicial agency.[146]

A special tribunal for the decision of controversies regarding nominations may be an *ex officio* board composed of the state auditor, secretary of state, and attorney-general.[147] The decisions of such a tribunal are not subject to judicial review on account of allegations of error in parliamentary law or disregard of party customs,[148] but may be set aside because of fraud.[149] It has been held

[141] Phelps v. Piper (1896), 48 Neb. 724, 67 N.W. 755; State *ex rel.* Dahlman v. Piper (1896), 50 Neb. 25, 69 N.W. 378; Davis v. Hambrick (1900), 109 Ky. 276, 58 S.W. 779; Winnett v. Adams *et al.* (1904), 71 Neb. 817, 99 N.W. 681.

[142] William v. Lewis (1898), 6 Ida. 184, 54 Pac. 619; Spencer v. Maloney (1900), 28 Colo. 38, 62 Pac. 850; State *ex rel.* Fosser v. Lavik (1900), 9 N.D. 461, 83 N.W. 914; State *ex rel.* Howells v. Metcalf (1904), 18 S.D. 393, 100 N.W. 923.

[143] Phelps v. Piper (1896), 48 Neb. 724, 67 N.W. 755; State *ex rel.* Dahlman v. Piper (1896), 50 Neb. 25, 69 N.W. 378.

[144] State *ex rel.* Howells v. Metcalf (1904), 18 S.D. 393, 100 N.W. 923.

[145] State *ex rel.* Ponath v. Hamilton (Supreme Court of Missouri, 1922), 240 S.W. 445; Tuck v. Cotton (1927), 175 Ark. 409, 295 S.W. 613.

[146] Miller v. Clark (1900), 62 Kan. 278, 62 Pac. 664; Allen v. Burrow (1904), 69 Kan. 812, 77 Pac. 555; State *ex rel.* Labbe v. Millsaps (1916), 139 La. 242, 71 So. 496; Hyde v. Logan, Boykin v. Logan (1919), 113 S.C. 64, 101 S.E. 41; State *ex rel.* Hatfield v. Carrington (1922), 194 Ia. 785, 190 N.W. 390.

[147] Miller v. Clark (1900), 62 Kan. 278, 62 Pac. 664.

[148] *Ibid.* [149] Allen v. Burrow (1904), 69 Kan. 812, 77 Pac. 555.

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that the legislature may vest the power to decide disputes as to nominations in the officer charged with the preparation of the ballots, but that the decisions of such officer are reviewable by the courts.[150]

In a number of states, the legislature has vested the power to decide disputes concerning nominations in the committees of the political parties. Such enactments have frequently been held to be constitutional.[151] The decision of a party committee acting under such statutory authorization is final, however, only so far as the councils of the party are concerned, and may be reviewed by the courts.[152] Moreover, the party committee must act according to the principles of justice as to notice and hearing, and must observe the usages of the party.[153] In the absence of statutory enactment of this character, it has been held that the state convention, as the supreme governing authority of the party, has an inherent right to decide factional controversies, and that the courts will take judicial notice of such decisions and regard them as conclusive.[154]

The establishment of special tribunals to decide controversies concerning nominations has relieved the courts from the necessity of umpiring the commonest internal struggles within political parties. Yet it is still possible for the courts to be presented with certain kinds of factional quarrels. A court may be asked to decide which of two conventions, or which of two party committees, is regular in the sense of being established according to law and party rules. In such cases, the courts generally hold that the body conducted more nearly in accord with the law and party rules, or recognized by a superior party authority, shall be regarded as "regular." A court may take jurisdiction in a factional struggle within a party when it can be shown that the convention was conducted irregu-

[150] Spencer v. Maloney (1900), 28 Colo. 38, 62 Pac. 850.

[151] Cain v. Page *et al.* (Court of Appeals of Kentucky, 1897), 42 S.W. 336; People *ex rel.* Lowry v. District Court (1903), 32 Colo. 15, 74 Pac. 896; State *ex rel.* Cook v. Hauser (1904), 122 Wis. 534, 100 N.W. 964; State *ex rel.* Rees v. Foster (1904), 111 La. 1087, 36 So. 200; Commonwealth v. Combs (1905), 120 Ky. 368, 86 S.W. 697; People *ex rel.* McCarren v. Dooling (1908), 60 N.Y. Misc. 132, 112 N. Y. Supp. 67; Hyde v. Logan, Boykin v. Logan (1919), 113 S.C. 64, 101 S.E. 41.

[152] Hyde v. Logan, Boykin v. Logan (1919), 113 S.C. 64, 101 S.E. 41.

[153] State *ex rel.* Yates v. Crittenden (1901), 164 Mo. 237, 64 S.W. 162.

[154] Cain v. Page *et al.* (Court of Appeals of Kentucky, 1897), 42 S.W. 336; State *ex rel.* Buttz v. Lindahl (1903), 11 N.D. 320, 91 N.W. 950.

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larly;[155] but a court will not undertake to recanvass the vote of a convention in the absence of fraud or oppression.[156]

The enforcement of judicial control of political parties gives rise to few difficulties, since most of the cases involving such parties, directly or indirectly, have natural persons as parties to the proceedings. Fortunately, the courts do not have to consider how to enforce their process against political parties as such. The only questions of difficulty or importance arise with reference to party committees.

The Missouri supreme court has held that a writ of certiorari will not lie to a party committee, because the actions and proceedings of a political body cannot be regarded as quasi-judicial in nature.[157] On the other hand, the South Carolina supreme court on one occasion reviewed on certiorari and set aside the action of a party committee;[158] and on another occasion, while refusing to review the exercise of discretion by a party committee, the same court seemed to approve the principle that certiorari may lie to such a body.[159]

One case may be cited in which a writ of mandamus was issued to a party committee.[160] The Texas supreme court once approved the issuance of a writ of injunction against a party committee.[161] The Louisiana courts have in at least one case enjoined a party committee.[162] A party committee may not be subpoenaed by a writ issued to its officers; the members can be summoned only as individuals.[163]

[155] French v. Roosevelt (1896), 18 N.Y. Misc. 307, 41 N.Y. Supp. 1080; State *ex rel.* Fosser v. Lavik (1900), 9 N.D. 461, 83 N.W. 914; Walling v. Lansdon (1908), 15 Ida. 282, 97 Pac. 396.

[156] Rogers v. Lawrence (1931), 253 Mich. 594, 235 N.W. 265.

[157] State *ex rel.* Kiel v. Riechmann (1911), 239 Mo. 81, 142 S.W. 304.

[158] Hyde v. Logan, Boykin v. Logan (1919), 113 S.C. 64, 101 S.E. 41.

[159] Raines v. Stone (1919), 112 S.C. 147, 99 S.E. 353.

[160] People *ex rel.* Coffey v. Democratic General Committee of Kings County (1900), 164 N.Y. 347, 58 N.E. 124.

[161] Gilmore v. Waples *et al.* (1916), 108 Tex. 167, 188 S.W. 1037.

[162] Moran v. Grasser, 1935, not reported but mentioned by Higgins, J., 183 La. 977.

[163] Saxer and Pfeiffer v. Democratic General Committee of Erie County (1936), 161 N.Y. Misc. 35, 291 N.Y. Supp. 18.

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STATE CONSTITUTIONAL LAW IN 1939–1940[1]

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During the past year, the state appellate courts have reviewed state legislation with a degree of restraint more marked than in the preceding year. The present attitude of the courts toward the work of legislatures may be in part the result of a change in court personnel. It is also both possible and probable that judges have been impressed by the more tolerant or liberal attitude of the United States Supreme Court.[2] Finally, a few of the judges may have become aware of the fact that the times demand the relinquishment of an assumed judicial "supremacy" and the examination of legislative and administrative action under specific constitutional provisions in the light of social and economic realities. At all events, judicial review in the grand manner has given way to a more vigorous application of technical constitutional requirements. Courts are tending to emphasize procedure rather than substance; review appears to be at once more tolerant and more precise; decisions turn on narrower grounds, premises are less sweeping. When applied to state constitutions, this tendency means something quite different from what it means when applied to the national constitution.

This tendency may perhaps be regarded as charged with possible evil results for the courts. Although state constitutions are, in most cases, so detailed and diverse that no actual diminution of the courts' discretionary powers need result, and although to a successful litigant it makes little difference whether a statute is invalidated for want of due process or for want of a proper title or enacting clause, it is difficult to conceive of many things that will bring the courts more quickly into popular disrepute than an exaggeration of constitutional technicalities.[3]

I. GOVERNMENTAL ORGANIZATION AND PROCEDURE

The Electorate. A Florida statute limiting the right to vote in a special school tax election to persons who had voted in the last preceding general election was held unconstitutional in establishing electoral qualifications other than those found in the constitution—qualifications that if enforced

[1] Howard Jay Graham, research fellow in political science, University of California, and Lawrence O. Erickson, Jr., compiler of "Comparative Provisions of State Constitutions" (under W.P.A. Project 11578-A-11 [unpublished], sponsored by the School of Jurisprudence, University of California), gave invaluable aid in the preliminary analysis and selection of cases for this article.

[2] For a discussion of the change in the attitude of the federal Supreme Court toward its reviewing functions, see F. D. G. Ribble, "Some Aspects of Judicial Self-Restraint," *Virginia Law Rev.*, Vol. 26, pp. 981–998 (June 1940).

[3] In this connection, see Vaughn & Ragsdale Co., Inc. v. State Board of Equalization *et al.*, 96 P. 2d 420 (Mont., Dec., 1939), discussed below, p. 702.

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would exclude electors otherwise eligible.[4] The Florida court also declared unconstitutional an absentee voters statute which failed to require absent voters to make an affidavit stating that they were obliged to be out of the state on election day, and also failed to provide before whom the required affidavit should be signed. The law was held too ambiguous to be enforced.[5]

In 1936, three initiative measures qualified for a place on the Arizona ballot. Publicity pamphlets were duly prepared by the secretary of state and printed at state expense, but the secretary negligently failed to send them to county boards of supervisors for distribution to the voters. For that reason, he was enjoined from submitting the measures at the 1936 general election. In 1938, the measures were again printed in the publicity booklet; but the state auditor refused to recognize the printer's claim for the reprinted portion. Although condemning the "inexcusable" negligence which prevented popular action on these measures, the court held that the constitutional requirement that such measures be acted upon "at the next regular general election" after filing of the petitions precluded submission at a later date. The auditor's refusal to pay for reprinting the measures was thus upheld.[6]

The Legislature: Membership. The Arkansas constitution makes each house of the General Assembly "sole judge" of its members' qualifications. Another provision empowers the governor to fill vacancies in all elective offices except, among others, membership in the General Assembly. A few weeks after this latter constitutional provision was

[4] State *ex rel.* Landis v. County Board of Public Instruction of Hillsborough County *et al.*, 188 So. 88 (Fla., May, 1939). The Arkansas constitution was held to grant the right of referendum to the people on legislation of every character, whether the legislation affects all or only a part of the citizens of a municipality. Carpenter v. City of Paragould *et al.*, 128 S. W. 2d 980 (Ark., June, 1939). On property qualifications for voting, see Board of Education of School District No. 7, Dearborn Township, v. Cahow, 287 N.W. 484 (Mich., July, 1939).

[5] State *ex rel.* Whitley v. Rinehart, 192 So. 819 (Fla., Jan., 1940). A ballot title that was the same as a legislative title was held sufficient. Hogan v. Hall, Secretary of State, 130 S.W. 2d 716 (Ark., July, 1939), and Bailey v. Hall, Secretary of State, *et al.*, 131 S.W. 2d 635 (Ark., Oct., 1939).

[6] Sims Printing Co. v. Frohmiller, 92 P. 2d 334 (Ariz., July, 1939). The phrase "until the next regular election" used in the Georgia constitution to limit the tenure of supreme court judges appointed by the governor to fill vacancies was defined in Stephens v. Reid, 6 S.E. 2d 728 (Ga., Dec., 1939). The court followed the weight of authority in denying office to one who had been elected at a special election. The same rule was applied to a vacancy in the office of attorney-general in Wood v. Arnall, 6 S.E. 2d 722 (Ga., Dec., 1939). When the governor calls a special election to consider an initiative constitutional amendment, a referendum which has qualified for submission to the voters must be presented at the same special election, Hart v. Jordan, Secretary of State, *et al.*, 94 P. 2d 808 (Cal., Sept., 1939).

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adopted and became effective, Governor Bailey named Paul Gutensohn to fill an unexpired term in the state senate. Gutensohn was accepted by the senate and served as a member in good standing. In August, 1939, at a special session called to salvage a complex refunding program recently overturned by the state supreme court on statutory grounds,[7] Gutensohn's vote proved decisive in enacting the essential emergency clause. In the test case that followed the adoption of this legislation,[8] the court was asked to decide whether Gutensohn was a member *de jure* or *de facto*. The majority of the court, after upholding the act against all other constitutional objections, flatly rejected the argument that the senate's acquiescence in Gutensohn's appointment made him a member either *de jure* or *de facto*. Implicit in the majority opinion was the view that in event of a conflict arising under two clauses of the constitution, the supreme court's decision, rather than the legislature's, shall be final on the matter of legislative qualifications, any implication of the word "sole" notwithstanding.

Three judges dissented from this holding. An interesting feature of their opinion was the use, embarrassing to the majority, which they made of the court's decision in State *ex rel.* Evans v. Wheatley *et al.*,[9] handed down six months earlier. There it had been held that the clause making each house "sole judge" of its members' qualifications prevented the court from ruling on the status of an elected member of the senate who had been seated following his conviction of a felony, despite a constitutional provision making persons so convicted ineligible for legislative office.

Legislature: Legislative Journals. Montana's Chain Store License Acts were the bases for two striking decisions on the admissibility and uses of legislative journals in judicial proceedings. Both decisions involved interpretation of very precise and detailed provisions of the constitution. In the first case,[10] the court refused to employ the journals as an aid in arriving at legislative intent. In the second,[11] the court relied on the journals, taking them at their face value. The Chain Store License Act of 1937, as signed by the presiding officers of the two houses, erroneously bore the form of the enacting clause required for initiative measures, i.e., "Be it enacted by the people of Montana." A reference to the journals would have shown the court that the bill was originally introduced in

[7] Matthews v. Bailey, Governor, *et al.*, 130 S.W. 2d 1006 (Ark., July, 1939).

[8] Matthews v. Bailey, Governor, 131 S.W. 2d 425 (Ark., Aug., 1939).

[9] 125 S.W. 2d 101 (Ark., Feb., 1939).

[10] Vaughn & Ragsdale Co., Inc., v. State Board of Equalization *et al.*, 96 P. 2d 420 (Mont., Dec., 1939).

[11] Standard Oil Co. (Indiana) v. State Board of Equalization *et al.*, 99 P. 2d 229 (Mont., Feb., 1940).

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that form, and that, following the introduction, the defect was noted and the measure amended to carry the correct enacting clause, "Be it enacted by the Legislative Assembly." In that form, it passed both houses. When copies of the measure were made for signatures of the presiding officers, someone "intentionally or inadvertently" altered the enacting clause by substituting the word "people" for "Legislative Assembly." The majority of the court[12] held that it could not look behind the enrolled bill to the journals to determine whether when the bill was passed the correct legislative form had been used. The defect in the enacting clause was one which the legislature alone could remedy. Consequently, the whole act was invalid and license taxes that had been paid were recoverable. Two judges dissented. They argued that the court's obligation was to sustain the act if possible. "Reasons relied upon by courts which prevent reference to the journals to impeach an act . . . do not apply in a case where resort to the journals is for the purpose of sustaining legislative acts." To hold otherwise was to "place a bounty on carelessness or to permit the intentional act of some irresponsible person to nullify the act of the legislative assembly."

Validity of the Montana chain store law of 1933 hinged on another provision of the Montana constitution limiting legislative sessions to 60 days. When the Standard Oil Company, seeking to avoid paying license taxes on its leased service stations, challenged the statute on the ground that the statute had been passed after the 60-day limit, the court ruled that "in an attack on the validity of a legislative enactment the journals import absolute verity"[13]—this, despite the fact that the journals recorded "legislative" rather than "standard" time.

In one significant Alabama decision, the supreme court of that state refused to allow the attack of a litigant to invalidate legislative action on a constitutional technicality. The state constitution requires that proposed constitutional amendments be read at length on three separate days in each of the two houses of the legislature. Non-compliance with this clause was made the ground for attacking the validity of a retrenchment amendment adopted in 1933. The court ruled that legislative journals need not show that the required three readings were had in *haec verba* in each house. "Substantial compliance" with constitutional requirements as to "legislative details" was held sufficient.[14]

Legislature: Local and Special Laws. The Florida legislature, following well-known practice, has sought to avoid the constitutional prohibition against local legislation by passing laws which, though expressed in general terms, are applicable only to certain counties or areas. The state supreme court has now served notice that it will no longer countenance

[12] See note 10 above. [13] See note 11 above.

[14] Storrs v. Heck, State Controller, *et al.*, 190 So. 78 (Ala., June, 1939).

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such measures. A 1937 statute providing for the re-registration of all voters in counties having a population of 150,000 or over, according to a state census of 1935, was declared invalid as a special and local law, the reason being that the measure really applied to only three counties.[15]

Pennsylvania statutes extending veterans' civil service preference beyond conventional and justifiable limits have recently suffered serious reverses. In the most recent case, the court invalidated portions of the third-class-city law which permitted appointment of veterans to city positions without regard to age limitations and also granted a 15 per cent advance credit, not merely as a preference to those passing the examination, but as an aid in doing so. The court held that both provisions violated the prohibition against granting any special or exclusive privileges or immunities.[16]

Legislature: Defective Title of an Act. In 1939, Tennessee, following Ohio's lead, required that all motor vehicles owned and operated in the state be represented by certificates of title issued in triplicate, one copy to be retained by the issuing clerk of the county court, one to be filed with a state finance officer, and the third to be held by the owner of the car or the holder of a first lien. This statute was held unconstitutional. The court found the title defective (1) in that it failed to recite portions of the code it partially repealed, in violation of an express constitutional provision, and (2) because the title failed to suggest certain matters covered by the act, violating the clause of the constitution stating that "no bill shall become a law, which embraces more than one subject; that subject to be expressed in the title."[17]

By an act of 1935 Utah placed a tax of one-and-a-half cents per mile on Diesel-powered vehicles, these machines being exempt from the four-

[15] Fort v. Dekle, Supervisor of Registration, *et al.*, 190 So. 542 (Fla., May, 1939). In State *ex rel.* Coleman v. York *et al.*, 190 So. 599 (Fla., July, 1939), the same court declared void a statute of 1935 which excepted counties of "populations of between 4,115 and 4,130, and . . . 4,060 and 4,070, according to the 1930 census" from provisions of state medical and dental practice acts, and which in effect permitted persons not holding licenses to practice medicine in these sparsely settled counties.

[16] Carney *et al.* v. Lowe *et al.*, 9 A. 2d 418 (Pa., Nov., 1939). In the case of Commonwealth *ex rel.* Graham v. Schmid, 3 A. 2d 701 (Pa., Jan., 1939), the court had held that a law which granted a 15-point credit to aid in passing a civil service examination was unconstitutional in that it violated the constitutional prohibition against the granting of any special or exclusive privilege or immunity. See also Blackford v. Judith Basin County, 98 P. 2d 872 (Mont., Feb., 1940).

[17] The court stated that the act might have been invalidated on substantive grounds had it not fallen on procedural defects. George Cole Motor Co. *et al.* v. McCanless, Commissioner of Finance and Taxation, *et al.*, 130 S.W. 2d 93 (Tenn., July, 1939). See also Joyce v. Price, County Director of Bridges, *et al.*, 8 A. 2d 226 (N.J., Aug., 1939).

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cents-per gallon gasoline tax. The court divided sharply in Carter *et al.* v. Tax Commission *et al.*[18] Distressed to find the Diesel mileage tax revenues used for administering the registration and anti-theft provisions of the vehicle laws, a three-judge majority held the classification unreasonable and discriminatory. Nothing in the title, they argued, indicated that the measure was for revenue purposes, still less that it was designed to equalize the gasoline tax. The constitutional requirement that all general laws be of uniform operation was likewise held to have been violated. Two judges dissented, contending that administrative difficulties arising from the greater non-vehicular use of Diesel fuel than of gasoline not only had motivated the legislature's classification, but had thoroughly justified it. They stressed the fact that the gasoline tax itself had always gone into a separate fund. Inasmuch as Diesel fuel was exempt from the gallonage tax, the effect of the majority decision was to exempt operators of Diesel trucks from payment of any fuel tax. "The simple . . . and almost obvious purpose" of the controversial section had been to equalize tax burdens.

Legislature: Interim Committee. A resolution adopted at the 1937 session of the California state assembly created 10 interim committees to aid in the formulation of legislative policy. Funds were appropriated for the expenses of the committees, and members were allowed mileage. All the committees were empowered to subpoena witnesses and to require the production of papers and records. On February 7, 1938, following adjournment of the legislature, the Assembly Interim Committee on Public Morals, one of the 10 interim committees, met in Los Angeles to inquire into the status of vice and crime in that metropolis. Witnesses were subpoenaed. On the refusal of witnesses to answer questions put by the committee, proceedings were instituted to compel the giving of testimony. The trial court held that it had no power to compel witnesses to answer questions. The reasons assigned were two: (1) the committee had not been lawfully created because the Assembly had no power to create a committee by a single house resolution with authority to sit after adjournment *sine die*, (2) the committee, if lawful, exceeded its powers. This decision was affirmed by the state supreme court.[19]

The decision handed down during the period under examination arose on rehearing of the above case.[20] The main question presented to the court, was: Can a single house by resolution create an investigating

[18] 96 P. 2d 727 (Utah, Dec., 1939). The tax was reduced slightly in 1937.

[19] Petition of Special Assembly Interim Committee on Public Morals of California Legislature, 83 P. 2d 932 (Cal., Nov., 1938).

[20] The court incorporated the opinion delivered in the earlier case into its decision on rehearing. Two judges who dissented on rehearing took no part in the original decision.

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committee to sit after the legislature has adjourned *sine die?* The court replied no. The theory of the decision was: "When the power to legislate ceases . . . the power to investigate . . . ceases, or, stated another way, when the main power of legislating dies, the incidental or implied power dies with it; that upon adjournment *sine die* the legislative powers of both houses of the legislature cease; that thereafter the members of the legislature have no legislative powers unless a special session is called; . . . that each regular session of a legislature is composed of a different body from its predecessor." The major premise of the decision is stated in the last preceding clause, i.e., the legislature is not a continuing body, but a series of successive bodies. By the decision of the court here, each of these successive bodies is compelled to get along with such information as it has or can get during the brief time the body is in session. This is not only an unrealistic view of the legislative process, but a most unfortunate one as well.[21] The majority of the court saw no merit in the portion of the argument based on usage. "Usage and custom, no matter how long continued, cannot create a right in the legislature that otherwise it does not possess, and which, as already held, is *impliedly* denied to it" (italics added). The two justices who dissented based their opinion on the importance and necessity of investigation, and argued that in the absence of express constitutional inhibitions the court should not undertake to hamper and obstruct legislation.[22]

Legislature: Reapportionment. The 1937 legislature of North Carolina had not been reapportioned as provided by the constitution. What effect would this have on a state sales tax act passed that year? Failure to reapportion, the plaintiff contended in a case testing that act, invalidated all legislation passed at that session. The court, admitting that this was "a devastating argument if sound," because the legislative defect would thereby be one that could never be remedied, found convenient refuge in the doctrine of "political questions."[23]

Executive: Governor's Powers as Commander-in-Chief of the Militia. Events abroad and the huge preparedness program now under way at

[21] See McGrain v. Daugherty, 273 U.S. 135 (1927), 50 A.L.R. 1.

[22] Petition of Special Assembly Interim Committee on Public Morals of California Legislature, 90 P. 2d 304 (Cal., May, 1939). See also the companion case of Swing *et al.* v. Riley, State Controller, 90 P. 2d 313 (Cal., May, 1939), incorporating here on rehearing the opinion delivered in 83 P. 2d 938 (see footnote 20 above), which applied the doctrine of the case above examined to the state senate. The fact that senators serve for four-year terms did not change the case, as half of that body is up for election every two years. The court here, however, went further and ruled that the legislature was powerless at a special session to pass a concurrent resolution proposing to validate its prior action in creating interim committees to sit after adjournment.

[23] Leonard v. Maxwell, Commissioner of Revenue, 3 S.E. 2d 316 (N.C., June, 1939).

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home lend importance to a three-to-two decision of the New Mexico supreme court upholding broad discretionary powers of the governor as commander-in-chief of the state militia. In October, 1939, following the invasion of Poland and President Roosevelt's declaration of a limited national emergency, the governor of New Mexico ordered the adjutant-general to call out the National Guard, or such parts thereof as he deemed necessary, and to take steps to convert the 111th Cavalry into a regiment of anti-aircraft artillery. Pursuant to the order, the adjutant-general called out members of the National Guard and proceeded to incur considerable expense for the alteration and repair of the Santa Fé Armory. On the refusal of the state treasurer to execute certificates of indebtedness for the expenses incurred, the supreme court was obliged to determine whether or not the governor had exceeded his constitutional and statutory authority. The majority of the court held that the constitutional provision that the governor "shall have power to call out the militia . . . to repel invasion" implied the power to call out the militia in case of danger of invasion, and that the power "to provide for the public defense" embraces considerations of preparedness as well as execution. Statutes providing for payment of expenses thus incurred were therefore to be construed liberally. Such matters, said the majority, must be left to the governor's discretion and good faith; and it is the legislature's duty, not the court's, to remedy any abuse of authority.[24]

Judicial Power. The North Dakota constitution forbids the legislature to impose on the supreme court any non-judicial duties and any power of appointment not therein provided.[25] It also requires the concurrence of at least four of the five supreme court judges in order to declare an act unconstitutional. When the 1939 legislature made the court responsible for the appointment and supervision of a commission to recodify state laws, only three judges were convinced that the measure was invalid. The two judges whose votes sustained the statute held the act valid because the supreme court had for years "under legislative authority, but technically contrary to Section 96 . . ., made appointments, helpful and necessary in the performance of its judicial duties." Such, in fact, was the appointment of state bar examiners.[26]

[24] State *ex rel.* Charlton, Adjutant-General v. French, State Treasurer, 99 P. 2d 715 (N.M., Feb., 1940).

[25] Section 96: "No duties shall be imposed by law upon the Supreme Court or on any of the judges thereof, except as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided."

[26] The judges were unamimous in holding unconstitutional those provisions of the law which provided for judicial supervision of contracts for printing and binding of the complete code. It is interesting to note that in this case the entire supreme court disqualified itself. The places of the regular members of the court were taken by district court judges. State *ex rel.* Mason v. Baker, State Auditor, *et al.*, 288 N.W. 202 (N.D., Oct., 1939).

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Judiciary: Right to Practice Law. Although conceding the legislature's authority to fix minimum requirements for admission to the bar, the Oklahoma supreme court invalidated a statute which admitted to practice any graduate of a "Grade A" law school. Such a statute, the court held, interfered with its own "inherent powers" over an integrated state bar.[27]

Judiciary: Abolition of Judgeship. In May, 1939, the Maryland legislature changed the laws relating to justices of the peace in Anne Arundel county, taking away nearly all the justices' power and jurisdiction, and reducing their salaries to $50 a year plus fees. The act gave the county three trial magistrates at salaries of $1,500 to $3,000. Trial of all criminal and civil cases was to be removed to trial magistrates' courts. The statute was contested by Woelfel, a justice of the peace who had received his commission just prior to the passage of the act. He contended that the act violated the state constitution in that it diminished his salary during his term of office. This was clearly the fact, and it was recognized by the court.[28]

Judicial Review. An Ohio statute gives persons a right to a rehearing before the Industrial Commission in injury cases, and provides review of such cases in the common pleas court. The law, however, denies both rehearing and review of Commission decisions on claims arising out of occupational diseases. A claimant contended that this latter provision of the code was unconstitutional under Section 16 of Article I of the state constitution: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." In an action brought to compel the Industrial Commission to grant a rehearing, counsel requested the state supreme court to invalidate the code section denying rehearing and review. This the court refused to do.[29] The Ohio code, it declared, deprives parties of none of their common law rights. In fact, the code denies no rights whatsoever. The statute grants certain benefits, and the fact that it does not at the same time grant the additional privileges of rehearing and review does

[27] *In re* Bledsoe, 97 P. 2d 556 (Okla., Dec., 1939). See also *In re* Integration of State Bar of Oklahoma, 95 P. 2d 113 (Okla., Oct., 1939): "There is no express grant of power in the constitution of Oklahoma giving to any of the three departments of the government the right to define and regulate the practice of law, but the very fact that the supreme court was created by the constitution gives it the right to regulate . . . and control the practice of law within its jurisdiction"(!). See Grant, in this REVIEW, Vol. 33, pp. 619–620 (Aug., 1939).

[28] Woelfel v. State, 9 A. 2d 826 (Md., Nov., 1939). See also Levin v. Hewes, 86 A. 233 (Md., Dec., 1912), and the Kansas case of *In re* Greer, 48 P. 950 (Kan., May, 1897).

[29] State *ex rel.* Jonak v. Beall *et al.*, 24 N.E. 2d 826 (Ohio, Jan., 1940).

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not invalidate the legislation. "Manifestly, the remedy here sought is one for the legislature and not for the courts."[30]

Extraterritorial Application of Constitutions. An action for damages resulting from an automobile accident was tried in a Michigan court. The accident occurred in Ontario, Canada, but the parties were Michigan residents. The plaintiff contended that an Ontario statute denying a guest passenger any cause of action against the car owner or driver—regardless of either negligence or wilful misconduct—could not be given effect by the Michigan court because the statute could not be reconciled with the Michigan and the United States constitutions. This argument was discarded by the court. "Neither our constitutional laws nor our statutory laws are of extraterritorial force as applied to a case of this character."[31]

II. RIGHTS OF INDIVIDUALS

Freedom of Speech and Press. The fact that the United States Supreme Court has construed a particular constitutional guarantee common to both state and federal constitutions has proved to be neither an effective bar to further litigation on the clause nor, in all cases, a guide. The cases of City of Dearborn v. Ansell,[32] City of Cincinnati v. Mosier,[33] and State v. Cantwell *et al.*[34] were all concerned with handbill ordinances, and all three examined the federal decision in Lovell v. City of Griffin.[35] That decision, however, was followed in the Dearborn case alone. In the Cincinnati case, the Ohio court of appeal sustained a city ordinance requiring peddlers, including those selling books and pamphlets, to obtain licenses. The Connecticut court in the Cantwell case so narrowly construed Lovell v. City of Griffin that its decision was expressly overruled by the United States Supreme Court during the past term.[36]

Of the cases on picketing which reached state appellate courts, one[37] was of particular interest. In the face of the state anti-injunction act,

[30] The court relied in part on Industrial Commission of Ohio v. Monroe *et al.*, 146 N.E. 213 (Ohio, Dec., 1924), which case held that "the right of appeal is a statutory right and by legislative action this right may be given or denied."

[31] Kaiser v. North *et al.*, 289 N.W. 325 (Mich., Dec., 1939).

[32] 287 N.W. 551 (Mich., Sept., 1939).

[33] (Court of Appeals), 22 N.E. 2d 418 (Ohio, Jan., 1939).

[34] 8 A. 2d 533 (Conn., Oct., 1939).

[35] 303 U.S. 444. In this case, the supreme court held a municipal handbill ordinance "invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. . . . The liberty of the press . . . necessarily embraces pamphlets and leaflets."

[36] Cantwell *et al.* v. State, 60 S. Ct. 900 (May 20, 1940).

[37] Swing *et al.* v. American Federation of Labor *et al.*, 22 N.E. 2d 857 (Ill., Oct., 1939).

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the Michigan supreme court upheld the right of an employer to obtain an injunction against picketing where the pickets were not then, and never had been, employees of the owner of the picketed establishment. The court held that the activities of the pickets amounted to libel, and not permissible speech. It disposed of the problem of interrelation of constitutional provisions—protection of property and freedom of speech —by holding all provisions co-equal. It would not permit one such right "to override or submerge another." The court was able to simplify its task of constitutional synthesis by declaring that in this case the picketing amounted to "an unbridled license of speech." This case was decided prior to recent United States Supreme Court decisions on picketing,[38] invalidating anti-picketing legislation of the state of Alabama and of a California county.

Religion. The supreme court of Florida upheld the right of a school board to expel a student for refusing to salute the flag.[39] As the United States Supreme Court has recently concurred in such a holding,[40] it is apparently settled law that a child can be compelled to salute the flag, the symbol of personal liberty, in spite of his own or his parent's religious beliefs. The Florida chief justice pointed out that flag-saluting is not a religious rite—that, in fact, flag-saluting and religion "are as clearly distinguished as Communism is from Democracy, as Calvinism is from Shintoism, or as Nudism is from the rule in Shelley's case."[41]

Equal Protection. Reference was made to this clause in a number of decisions during the year, but in no case did a state appellate court make any significant use of the doctrine.[42]

Privileges and Immunities. State courts showed a pronounced reluctance to invalidate legislation on the ground that it violated the privileges and

[38] Thornhill v. State of Alabama, 60 S.Ct. 736 (Apr. 22, 1940); Carlson v. People of the State of California, 60 S.Ct. 746 (Apr. 22, 1940). For a discussion of the relation of moving pictures to the guarantee of freedom of speech, see Thayer Amusement Corp. v. Moulton *et al.*, 7 A. 2d 682 (R.I., July, 1939).

[39] State *ex rel.* Bleich *et al.* v. Board of Public Instruction for Hillsborough County *et al.*, 190 So. 815 (Fla., Aug., 1939).

[40] Minersville School Dist. *et al.* v. Gobitis *et al.*, 83 L. ed. adv. 993 (June 3, 1940).

[41] The contention of a Kansas taxpayer that public school funds could not be used in support of a parochial school was sustained in Wright v. School District No. 27 of Woodson County *et al.*, 99 P. 2d 737 (Kan., Mar., 1940).

[42] The three more interesting cases held, respectively, (1) that a Detroit ordinance requiring cut flower vendors to be licensed was invalid (S. S. Kresge Co. v. Couzens, Mayor, *et al.*, 287 N.W. 427 (Mich., Sept., 1939)); (2) that a Columbus, Georgia, graduated chain store tax based on the number of stores and number of employees was also invalid (Great Atlantic and Pacific Tea Co. v. City of Columbus *et al.*, 6 S.E. 2d 320 (Ga., Dec., 1939)); and (3) that the Georgia milk control act was constitutional (Holcome *et al.* v. Georgia Milk Producers Confederation *et al.*, 3 S.E. 2d 705 Ga., June, 1939).

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immunities clauses of the state constitutions. Litigants successfully invoked this clause in one case, that of an attack upon a Minneapolis ordinance which permitted farmers to sell the produce of their own farms on the city streets without a license and without posting a bond. The city ordinance required both license and bond of transient merchants selling similar products.[43]

Right of the Accused: Counsel. In a Kentucky case, a man was indicted for murder one afternoon and tried the next morning. As the attorney he had employed did not appear for the trial, the court assigned a lawyer to defend him.[44] This procedure, the Kentucky court of appeals held, amounted to a denial of the convicted man's constitutional right to counsel.[45] In another case, an accused person was held to have been denied counsel where he knew of his right to be represented by attorney, but did not know that it was the court's obligation to furnish him with counsel where, as here, he was without financial resources.[46]

[43] State v. Pehrson, 287 N.W. 313 (Minn., Aug., 1939). This clause was held not to be violated: (1) by an Indiana statute which based a motor vehicle tax on carrying capacity, the load per axle, size of tires used, etc., of the vehicle in question (Eavey Co. *et al.* v. Department of Treasury of Indiana *et al.*, 24 N.E. 2d 268 (Ind., Dec., 1939)); (2) by a Washington statute that allowed an administrative department to establish freight rates charged by trucks, but permitted railroads to file their own tariffs for administrative approval (Pacific Inland Traffic Bureau v. Schaaf, Director of Department of Public Service, 95 P. 2d 781 (Wash., Nov., 1939)); (3) by a Washington law that directed the county commissioners of the several counties to undertake certain coördinating activities and designated one body to act as coördinating agent, the Washington State Association of County Commissioners (State *ex rel.* Cruikshank *et al.* County Commissioners v. Baker, County Auditor, 97 P. 2d 638 (Wash., Jan., 1940)); (4) by a Washington law that divided taxpayers for the purpose of correcting assessments and permitting refunds into two classes based on the amount of the claimed error (State *ex rel.* Northern Pacific Railway Co. v. Henneford *et al.*, Tax Commissioners, 99 P. 2d 616 (Wash., Mar., 1940)); (5) by a Kentucky law that allowed the sale of alcoholic beverages in drug stores, hotels, and private clubs within 200 yards of a church, school, or hospital if permitted by a state administrator, but not allowing any other retailing of liquor within the proscribed district without the consent of the institution affected (Beacon Liquors v. Martin *et al.*, 131 S.W. 2d 446 (Ky., May, 1939)); (6) and by a city ordinance of a Georgia city imposing a license tax for raising revenue upon dairymen milking more than six cows and delivering the milk in the city, in addition to subjecting all dairies to regulation (Rossman *et al.* v. City of Moultrie *et al.*, 7 S.E. 2d 270 (Ga., Feb., 1940)).

[44] The court declared that the unexplained absence of the attorney was "a most peculiar thing . . . "

[45] Chenault v. Commonwealth, 138 S.W. 969 (Ky., Mar., 1940).

[46] Commonwealth *ex rel.* Schultz v. Smith, Warden (Super. ct.), 11 A. 2d 656 (Pa., Mar., 1940). Cf. Harris v. Norris, Sheriff, 4 S.E. 2d 849 (Ga., Sept., 1939). See also Commonwealth v. Cunningham (Super. ct.), 9 A. 2d 161 (Pa., Nov., 1939), in which case a speech by a special prosecutor instructing the jury on principles of law in the absence of the accused and his counsel was held to constitute denial of counsel.

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The failure of an accused person to demand counsel in a case where he had pleaded guilty does not amount to a denial of counsel.[47] On appeal, one convicted of murder in the first degree contended that an Alabama judge denied him counsel by limiting the time for argument of both the state and the defense to 30 minutes. The higher court dismissed the appeal; influenced by "the famous case in which Cicero was limited to 30 minutes," without, however, passing upon the special qualifications of the attorney for the defense.[48]

Right of the Accused: Jury. The Maryland supreme court reviewed and sustained a conviction in a case where the accused had waived her unquestioned right to be tried by jury. The defendant contended that, as the constitution required the "unanimous consent" of a common law jury "in all criminal prosecutions," her conviction could not be sustained. The court refused to accept this argument, basing its verdict in part on long and uninterrupted practice in the state.[49]

As a general rule, the verdict of a jury may not be impeached. However, in a case where a unanimous verdict was required, and where a juror contended that he was given the "third degree" to get him to vote for conviction, the court found an exception to the rule.[50]

A Minnesota statute, challenged on the ground, among others, of denying the right to jury trial, was passed to protect the people of the state from sexual degenerates. The state supreme court sustained the law under which the jurisdiction of the probate court was broadened to include guardianship of all persons having a "psychopathic personality."[51] The court conceded that the definition of a psychopath as one whose "emotional instability, . . . impulsiveness of behavior, . . . lack of customary standards of good judgment, . . . failure to appreciate the

[47] Alexander v. O'Grady, Warden, 290 N.W. 718 (Neb., Mar., 1940). See also Davis v. O'Grady, 291 N.W. 82 (Neb., Mar., 1940).

[48] Jackson v. State, 193 S. 417 (Ala., Jan., 1940). To the contention of one appellant that the failure of an attorney appointed by the court to defend him properly amounted to denying him his constitutional right to counsel, the court held that the convicted person had been afforded due process of law. Aldridge, Sheriff, v. Williams, 4 S.E. 2d 469 (Ga., Sept., 1939).

[49] Rose v. State, 10 A. 2d 617 (Md., Jan., 1940). Relative to the supposed attempt on the part of the state of Texas to adopt a new practice and summon Negroes for jury service, see Smith v. State, 136 S.W. 2d 842 (Texas, Feb., 1940).

[50] Wharton v. People, 90 P. 2d 615 (Colo., May, 1939). Compare two civil cases, Marvin Drug Co. v. Couch (Ct. Civ. App.), 134 S.W. 2d 356 (Texas, Dec., 1939) (a juror became insane during suit and was excused), and Lee v. Baltimore Hotel Co., 136 S.W. 2d 695 (Mo., Dec., 1939) (one by falsely impersonating another was placed on a jury).

[51] State *ex rel.* Pearson v. Probate Court of Ramsey County *et al.*, 287 N.W. 297 (Minn., Aug., 1939). The Michigan supreme court in 1938 held a similar but more drastic statute void as denying the right to trial by jury. People v. Frontzcak *et al.*, 281 N.W. 534 (Mich., Oct., 1938).

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consequences of his acts" rendered him "irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons" might "offend the principles of legislative draftsmanship." It denied however, that the statute violated the constitution.[52]

Conduct of the Trial: Admissibility of Evidence. Evidence tending to incriminate one may not be introduced in a criminal prosecution when it has been taken from the defendant by unreasonable search and seizure. Thus, where officers broke into a defendant's apartment without a warrant and forced him to open his safe and hand over stolen goods, these goods could not be used in the prosecution of the accused.[53] On the other hand, a search under an invalid warrant did not prevent the introduction in court of evidence thus taken where the search was of another person's property. The right to question a search warrant, the court held, is a personal one.[54] It is an unreasonable search and seizure for officers without warrants to follow a man driving into a garage attached to his home and search his car and take contraband thus discovered. Consequently, the goods thus taken cannot be used against the man in court.[55] However, when officers discovered cartons of liquor in a parked car by merely looking through the windows of the car, the liquor could be taken and used in the prosecution of the owner,[56] despite the fact that the sense of sight is at best an inadequate test of the intoxicating character of liquor.

Conduct of the Trial: Privilege Against Self-Incrimination. In a Colorado case, a dissenting justice argued in vain that the rule against compulsory self-incrimination was no mere rule of evidence nor a right that could be lost on a procedural technicality. In support of the view that this was a fundamental right, he cited the Code of Hammurabi, ancient Hebrew jurisprudence, and Roman law, as well as American constitutional law. In the case at hand, a lobbyist had been tried and convicted for bribery. Previously he had been subpoenaed to appear and testify before a grand jury. He contended—correctly, it appears—that he had not been informed that the grand jury was investigating him, and that he was not warned that his testimony might be used against him. The majority agreed with the defendant as to his substantive rights under the constitution, but decided that since it must be presumed that the grand jury acted legitimately and in good faith, the burden was on the petitioner to prove that the grand jury deprived him of his constitutional rights—

[52] The fact that this decision has been sustained by the United States Supreme Court suggests that other states may soon follow Minnesota's lead. State of Minnesota *ex rel.* Pearson v. Probate Court of Ramsey County *et al.*, 60 S.Ct. 523 (Feb. 26, 1940). [53] People v. Dalpe, 21 N.E. 2d 756 (Ill., June, 1939).

[54] Stump v. State, 92 P. 2d 616 (Okla., June, 1939).

[55] Hammond v. State, 137 S.W. 2d 1042 (Texas, Mar., 1940).

[56] Matthews v. State, 93 P. 2d 549 (Okla., Aug., 1939). See also Barfield v. State, 99 P. 2d 544 (Okla., Feb., 1940).

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specifically, to prove that at the time when he testified the grand jury was investigating his conduct preparatory to prosecution.[57]

A defendant objected to the introduction in evidence in a criminal prosecution of statements he had made in a civil case growing out of the same incident. The court held that as the testimony in the civil case was a voluntary declaration on his part, it was admissible against him.[58]

Conduct of the Trial: Double Jeopardy.[59] Jeopardy is held to attach when a jury is impaneled and sworn. When such a jury is discharged, without the defendant's consent, after the taking of testimony has begun, a further trial on the same cause would amount to double jeopardy unless the discharge was made "for good cause."[60] But where a jury has been discharged on the defendant's asking for a continuance of his trial, he has thereby given implied consent for a later trial, and is not thus put in jeopardy a second time.[61]

Right to Petition. Two novel, though unsuccessful, attempts were made to invoke the constitutional right of petition. In one, a Georgia citizen presented a petition to officers of the state house of representatives calling for the impeachment of certain state officers. The speaker and the clerk refused to present the petition as requested. An action for nominal damages resulted. The high court of the state held the speaker and the clerk to be officers of the house and "answerable only to it under its rules and regulations. They owe to citizens generally no duty whatsoever in their official capacities."[62] The second case arose out of a conflict between a judge and a Louisiana grand jury that was intent upon conducting an investigation independent of the prosecuting attorney. The judge forbade the grand jurors to read in open court a petition requesting special assistance until the judge had been allowed to read it. On the violation of this order by some of the jurors, the judge held them in contempt and discharged them. These jurors contended that they had been denied their constitutional right to petition for redress of grievances. The court brushed this contention aside, holding the right of petition to be a right of citizens as individuals, not a right of citizens as public officials.[63]

[57] People v. Clifford, 98 P. 2d 272 (Colo., Jan., 1940).

[58] Shockley v. State, 133 S.W. 2d 630 (Ark., Dec., 1939). See also People v. Kynette *et al.* (Dist. Ct. of App.), 97 P 2d 287 (Cal., Dec., 1939), in which the contention of the accused that the prosecution could not introduce at a trial evidence showing that the defendant had refused to testify before the grand jury was sustained on the ground that the introduction of such evidence would amount to self-incrimination.

[59] The constitutions of Connecticut, Maryland, North Carolina, Vermont, and Massachusetts contain no privilege against double jeopardy.

[60] Baker *et al.* v. Commonwealth, 132 S.W. 2d 766 (Ky., Oct., 1939). See also Yoder v. State, 90 P. 2d 669 (Okla., May, 1939).

[61] State v. Reynolds, 131 S.W. 2d 552 (Mo., Sept., 1939).

[62] Richter v. Harris *et al.* (Ct. of App.), 7 S.E. 2d 432 (Ga., Mar., 1940).

[63] State *ex rel.* de Armas *et al.* v. Platt, District Judge, 192 So. 659 (La., Nov., 1939).

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III. GOVERNMENT AND BUSINESS

Fair Trade Laws. The text of a Florida statute made resale price maintenance contracts binding on all dealers. The title specified merely that producers, distributors, and the general public were to be protected against injurious and uneconomical practices in the distribution of trademarked commodities "through the use of voluntary contracts establishing minimum resale prices." The state supreme court affirmed the decision of a lower court, which had held the act unconstitutional because of a misleading title.[64] A more recent decision upholding the state dry cleaning code suggests that a fair trade law may be sustained when legislative draftsmanship is more precise.[65]

Milk Control.[66] Since the decision in the Nebbia case,[67] milk control statutes have attained respectability. Commissions enforcing such acts have been established in 21 states and upheld in 18.[68] A Louisiana decision is of particular interest in that it declared that state's act partially unconstitutional. To the extent that the act authorized the milk commission to issue regulations—violation of which was to constitute a misdemeanor—the act was declared an unconstitutional delegation of legislative power.[69]

Housing. Relying on a two-to-one decision in which the United States Circuit Court of Appeals for the Sixth Circuit denied that the federal government possessed the power to *condemn private property* for low-cost housing,[70] the Nebraska supreme court invalidated a section of the state's housing law which permitted "any state public body" to " . . . sell, convey, or lease any of *its property* to a housing authority, or the federal government" (italics added).[71] Housing and slum clearance, in the court's view, were not for a federal public purpose, and the quoted portions of the statute were thus held to violate state and federal due process clauses. It is significant that no other court has recently taken this position. Dur-

[64] Bristol-Myers Co. v. Webb's Cut Rate Drug Co., Inc., 188 So. 91 (Fla., May, 1939).

[65] Robinson v. Florida Dry Cleaning and Laundry Board, 194 So. 269 (Fla., Feb., 1940). The Pennsylvania superior court held that the State Fair Sales Act "offends against the due process clause of the Constitution . . . and the Bill of Rights . . . in that its scope is not sufficiently limited." Commonwealth v. Zasloff (Super. ct.), 8 A. 2d 801 (Pa., Oct., 1939). See also Lief v. Packard-Bamberger & Co., Inc., 8 A. 2d 291 (N.J., Sept., 1939).

[66] See also footnote 42 above. [67] 291 U.S. 502 (Mar. 5, 1934).

[68] See "Power of Legislature to Delegate Legislative Authority to Administrative Board," *Fordham Law Rev.*, Vol. 9, pp. 275–278 (May, 1940).

[69] State v. Maitrejean, 192 So. 361 (La., Nov., 1939). Cf. Noyes, Commissioner of Agriculture and Markets, v. Erie and Wyoming Farmers Coöperative Corporation, 22 N.E. 2d 334 (N.Y., July, 1939), and Savage *et al.* v. Martin, Governor, *et al.*, 91 P. 2d 273 (Ore., June, 1939).

[70] U.S. v. Certain Lands in the City of Louisville (6 Cir.), 78 Fed. 2d 684 (1935).

[71] Lennox *et al.* v. Housing Authority of City of Omaha *et al.*, 290 N.W. 451 (Neb., Feb., 1940).

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ing the past year, courts in Michigan,[72] Georgia,[73] Massachusetts,[74] Missouri,[75] and West Virginia[76] all sustained housing laws on broad grounds. The decision of the Massachusetts court in the Allydonn Realty Corporation case[77] is of special importance. The sixty-year-old Massachusetts case of Lowell *et al.* v. Boston[78] held that loans made to rebuild homes destroyed by the Boston fire were made for a private purpose.[79] This decision has been regarded as one of the major obstacles in the path of housing programs. The court in the Allydonn case, however, while avoiding overruling the Lowell decision, expressly held housing to be a public purpose.

Employment. In a lengthy opinion, a majority of the highest Massachusetts court advised the legislature that exclusion of married women from public employment irrespective of age, character, and capabilities would be arbitrary and unreasonable discrimination. A minority of two agreed that a general exclusion of married women solely on account of their marital status would be unconstitutional. These justices nevertheless upheld the competency of the General Court to determine that "in the interest of the common good, the employment of such women should be prohibited if their husbands are gainfully employed or able to furnish them with adequate support."[80]

A Wilmington ordinance prohibiting barbers from advertising their prices, and otherwise regulating the barbering business, was invalidated by the Delaware supreme court.[81] This is in line with the general tendency to invalidate laws seeking control of competition in this field by indirect means. Regulations of barbers in the interest of health are generally sustained, but the validity of price and hour regulations is still in doubt.[82]

[72] *In re* Brewster Street Housing Site in City of Detroit, 289 N.W. 493 (Mich., Dec., 1939).

[73] Barber *et al.* v. Housing Authority of the City of Rome, 5 S.E. 2d 425 (Ga., Oct., 1939).

[74] Allydonn Realty Corporation *et al.* v. Holyoke Housing Authority *et al.*, 23 N.E. 2d 665 (Mass., Nov., 1939).

[75] Laret Investment Company v. Dickmann, Mayor, *et al.*, 134 S.W. 2d 65 (Mo., Dec., 1939).

[76] Chapman v. Huntington, West Virginia, Housing Authority *et al.*, 3 S.E. 2d 502 (W.Va., June, 1939).

[77] 23 N.E. 2d 665 (Mass., Nov., 1939).

[78] 111 Mass., 454 (Mass., Mar., 1873).

[79] In 1912, the supreme judicial court, relying on Lowell v. Boston, 111 Mass. 454, advised that a proposed homestead law for industrial workers was unconstitutional in that it called for the expenditure of public funds for a private purpose. Opinion of Justices, 98 N.E. 611 (Mass., May, 1912).

[80] *In re* Opinion of the Justices, 22 N.E. 2d 49 (Mass., June, 1939).

[81] State v. Danberg, 6 A., 2d 596 (Del., May, 1939). See also State v. Garrubo, 10 A. 2d 635 (N.J., Jan., 1940), and Jones v. Bontempo (Ct. of Com. Pleas), 8 U.S. L.Wk. 266 (Ohio, Jan. 15, 1940).

[82] See "Barber-shop and Beauty Parlor Legislation," *Virginia Law Rev.*, Vol. 26, pp. 928–41 (May, 1940).

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Workmen's Compensation. Probably the most drastic statute considered by any state court during the year was one amending the Pennsylvania workmen's compensation law by creating a number of statutory presumptions which would have greatly increased the aggregate compensation paid to workers in the anthracite coal industry.[83] In a unanimous opinion,[84] reminiscent of the sweeping decisions of the eighties, the supreme court invalidated the measure on a long series of counts, the keystone of the decision being the due process clause of the state constitution.

Minimum Wages. In an attack on Oklahoma's Minimum Wage Act of 1937, counsel contended that the statute embodied an invalid delegation of legislative power and violated the due process clauses of the state and federal constitutions. While these arguments were rejected by seven of the supreme court judges, two members of the court, clinging to old concepts of *laissez faire*, held the law to be unconstitutional on both grounds. The third ground of attack impressed even the majority of the court. The measure's title[85] was held not to have forecast wage provisions relating to men and minors, and consequently these sections of the law were invalidated.[86] That this case marks a departure from old premises is indicated by the fact that the court no longer questioned the legislature's power to enact a wage law applicable to men.[87]

Taxation.[88] In fixing the county tax rate in 1933–34, the Los Angeles county supervisors failed to deduct the amount to be raised on solvent credits and securities from the amount to be raised on real property and secured personal property. This neglect, the supreme court later held, imposed an undue burden on the real property tax-roll and the supervisors' action consequently was partially invalid.[89] To forestall imminent fiscal and administrative chaos,[90] the 1939 legislature withdrew the right of refund on taxes "voluntarily" paid, and cut off all pending actions "in any case in which the taxes collected from such erroneous or illegal levy have been applied in the next . . . fiscal year to reduce the tax levy

[83] This act established new presumptions of employer's negligence and also required the payment of $1,500 to the state for the death of any employee leaving no dependents, when death would have been compensable if he had had dependents.

[84] Rich Hill Coal Co. *et al.* v. Bashore, Secretary of Labor and Industry, 7 A. 2d 302 (Pa., Apr., 1939).

[85] "An act prohibiting the employment of men, women, or minors in any industry or occupation within this state under conditions of labor detrimental to their health and morals; prohibiting the employment of women workers in any industry within this state at wages which are not adequate for their maintenance."

[86] Associated Industries of Oklahoma *et al.* v. Industrial Welfare Commission *et al.*, 90 P. 2d 899 (Okla., May, 1939).

[87] Also, the majority stated that it was not concerned with economic questions, and that its task was limited to passing on the constitutionality of laws.

[88] See cases discussed above, footnotes 10, 11, 18, 23, 42.

[89] Otis v. Los Angeles County, 70 P. 2d 633 (Cal., Aug., 1937).

[90] The immediate consequence of this decision was a flood of suits for refunds.

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for such year . . . or have been applied for a public purpose." Mere payment of a tax under protest was declared by the court not to constitute an involuntary payment. The court ruled that the right to a refund was purely statutory, and therefore could be repealed, and that withdrawal of the remedy terminated all pending actions. Neither the court's jurisdiction was, nor private rights were, held to have been impaired.[91]

During the past decade, courts generally have adopted a *laissez faire* attitude toward legislative supervision of public finance. In the absence of exceptional constitutional restrictions, judges have prudently allowed the legislature a free hand in this field. However, the Texas supreme court rendered a unanimous decision that runs counter to this trend. A statute enacted at the 1939 regular session granted to the counties (with some exceptions) one-half of the ad valorem taxes levied and collected by the state for general revenue purposes. The act further provided that the county commissioners' courts might use these tax funds to lower the county ad valorem tax rate, or for flood control, conservation, W.P.A. projects, relief, debt retirement, etc. The statute was attacked on several grounds. Opponents of the measure challenged it as an invalid delegation of legislative power, as drawing money from the state treasury without specific appropriation and for a longer term than two years, as containing more than one subject, and as being improperly titled. Overturning the statute on the second ground, the court conceded that there was "no express prohibition . . . in the constitution against the diversion of the state funds in question, and . . . [their] expenditure for the purposes named, yet we think the conclusion inescapable that such is impliedly prohibited."[92]

[91] Southern Service Co., Ltd. v. Los Angeles County, 97 P. 2d 963 (Cal., Jan., 1940). Affirmed by U. S. Supreme Court, per curiam 60 S.Ct. 979 (May 6, 1940).

[92] McCombs *et al.* v. Dallas County *et al.* (Ct. of Civ. App.), 136 S.W. 2d 975 (Texas, Feb., 1940). For a study of overlapping tax assessments in Texas and suggestions for their elimination, see M. G. Toepel, "The Assessment of Property for ad valorem Purposes in Texas Cities," *University of Texas Publication* 3931, Austin (Aug., 1939). See also Rosebud County v. Flinn *et al.*, 98 P. 2d 330 (Mont., Jan., 1940), in which the Montana supreme court examined the application of a provision of the state constitution denying the legislature the power to levy taxes within a county for county purposes. A statute provided that in a situation where property is stolen in one county and taken to another, either of the counties may prosecute, and that the county that conducted the prosecution could compel the other county to bear half of the cost of conducting the case. In an action by one county against another under this statute, the county proceeded against denied liability, grounding its claim on the above-mentioned constitutional provision and the consequent invalidity of the statute. The court rejected this contention. The power to define crime and punish criminals, it stated, is a power inherent in the state. This, the court declared, was not an example of the legislature laying a tax in one county. Rather, this was an instance of the exercise of a legislative power to devise equitable means for criminal prosecutions.

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The Economic Factor in the Roosevelt Elections. It seems to be generally agreed that Franklin D. Roosevelt is very unpopular with the wealthier groups in society and that he is held to be a very warm friend of the poor. Indeed, it is sometimes asserted that no president since Jefferson has so divided the voters along economic lines as has Roosevelt. Popular opinion on this subject, as on many others, is likely to be exaggerated. In any case, it is well to check by measurement the idea that the rich are against Roosevelt and the poor are for him. This has been done in some of the sample polls. For instance, *Fortune* finds that the prosperous present about 15 to 20 per cent more opposition to Roosevelt than is found among the poor. Similarly, the Gallup polls have found over twice as much opposition to Roosevelt among the upper third of the population as among the lower third. Where these surveys of opinion on Roosevelt have been presented by social classes, there has been shown, in accordance with popular opinion, this division between the rich and the poor in their attitude toward Roosevelt. But the percentage difference is not quite so large as might be expected.

This difference between the rich and the poor in attitude toward Roosevelt became accentuated around the middle of his first term. It is interesting to inquire into the extent to which those of the lower income groups voted for Roosevelt in 1932 and in 1936. For instance, in Chicago in 1932 it was shown that on the average Hoover did not get a majority of votes in a local area of the city unless the rental value was over $80.[1] It would be interesting to see whether that critical rental value would have been less or greater in 1936 than in 1932, and how large the change would have been. It was not feasible to make this exact comparison for Chicago, for the information on median rentals was not available for 1936; but it was feasible to make a somewhat similar comparison, which will now be discussed.

An index of economic level was constructed for 28 counties in Illinois.[2] This index was designed as a measure of income, much as the average rental by localities was used as an index of income. This index was composed of two parts, one representing the towns and the other representing the open country. For the towns, the index was based upon the average wages of those engaged in manufacturing and in retail and wholesale

[1] W. F. Ogburn and Estelle Hill, "Income Classes and the Roosevelt Vote in 1932," *Political Science Quarterly*, Vol. 50, pp. 186–193 (June, 1935).

[2] The counties for all the states used in this study were selected on the basis of population (those used ranged between 15,000 and 35,000), and on the basis of the per cent those occupied in business and industry were of the total occupied personnel of the county (for the counties used, this per cent was not less than 30 and not more than 65).

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trade. For the open country, the index was based upon the average value of farm per person occupied in farming. These were combined after weighting them according to the proportion of the population living in towns and on farms.[3] This index was correlated with the Roosevelt vote in 1932 to the extent of −.66. Thus the counties with the lower incomes voted more for Roosevelt than did the counties with the higher incomes.

A new economic index for 1935 was constructed in the same manner as the one based on 1930 data. The correlation between this 1935 index and the Roosevelt vote in 1936 was exactly the same as was the correlation in 1932, i.e., −.66. Thus it is seen that the poor and the rich tended to vote for and against Roosevelt in 1936 in about the same proportion as they did in 1932. The evidence does not seem to indicate that by 1936, at least, there was any greater cleavage between the rich and the poor, for these counties, than existed in 1932.

Upon making further detailed inquiries, it seemed desirable to make some observations on other states. In Indiana, there was practically no change between 1932 and 1936, as indicated by this economic index constructed for 44 Indiana counties on the same basis as was the Illinois index. The coëfficients of correlation were −.35 and −.38 for 1932 and 1936, respectively. It may be noticed, however, that in Indiana the correlations were considerably lower than for the state of Illinois. In the neighboring state of Ohio, which is in the same general economic region as are Indiana and Illinois, the correlations were somewhat different, −.15 and +.04. In Ohio, for the 32 counties selected, the rich and the poor counties, as measured by our economic index, voted in just about the same degree for Roosevelt as for the Republican candidates. If there was any trend between the two periods, it was that the wealthier counties voted a little more for Roosevelt in 1936 than in 1932. What the explanation may be is not known, but it is possible that the political influences of some state party organizations may tend to overshadow the economic factor.

In Pennsylvania, which is further east and has quite a different political tradition from Indiana and Illinois, the wealthier counties, of the 28 selected for use in this study, voted in both '32 and '36 somewhat more for Roosevelt than for the Republican candidates, the correlations being +.22 and +.19. This somewhat surprising fact calls for some discussion. It is recalled that the economic index for the counties is a combination of farm and urban elements, and is based upon the value of farms and the average wages in the cities. It is quite possible, for instance, that this in-

[3] The index was constructed by the familiar method of combining the deviations from the mean of each series after it has been divided by the standard deviation of the series. In constructing the wage index, each part was weighted by the proportion of the population occupied in each type of work.

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dex does not separate out adequately the rich and the poor voters. It does not single out the wealthy business group on the one hand and the wage-earners on the other. Perhaps the percentage of the population who are income tax payers might be a more successful index in singling out the wealthy. When the Roosevelt vote is correlated with the percentage paying income tax, the correlations for both years are negative. −.08 and −.14. These are based on only 28 counties and the correlations are so small as to be untrustworthy. In Ohio, the Roosevelt vote is correlated with the per cent paying income tax to the extent of −.14 and −.10, indicating possibly a slight tendency for the counties with the greatest number of well-to-do, as measured by the per cent paying income taxes, to vote against Roosevelt. But the shift between '32 and '36 is again negligible. In Illinois, the correlation of the Roosevelt vote with the income tax payers is much less than that with the economic index based upon wages and farm values. The coëfficients are −.19 and −.29 for 1932 and 1936, as compared with −.66 and −.66 for the economic index. The same general result is found for Indiana, where the correlation of the Roosevelt vote with the per cent of income tax payers is around one half or one third of what it is when correlated with the economic index. In both Illinois and Indiana, a slightly greater cleavage between the rich and the poor was found in 1936 as compared with 1932, when the per cent of income tax payers is used to separate the two groups. Perhaps we are justified in concluding, then, that, with the exception of Illinois, the economic index does not show a very great cleavage in the Roosevelt vote along economic lines, and very little shift between 1932 and 1936.

One other economic index is available, commonly known as the Goodrich index.[4] This index is based on data for 1928–30, and since there was probably considerable change by 1936 it may not inspire much confidence. But it must be remembered that although the economic conditions in any county may have changed considerably from 1928 to 1936, it is not necessary that the relative position of one county to another in economic level would have shifted so much. The correlations of the Roosevelt vote and the Goodrich index are not very greatly different from those of the previous indices discussed. In Pennsylvania, the correlation with the Roosevelt vote was −.09 and −.15, which is very much like the correlations with income tax payers. In Ohio, they were +.03 and −.19, small and with a negligible shift. In Illinois, they were −.63 and −.42, showing slightly less cleavage in 1936 than in 1932. In Indiana, −.32 and −.29, lower correlations than with the economic index and showing less cleavage. In these four states it is also noted that the correlations of the Roose-

[4] This index is based on the proportion of the population having telephones, radios, and paying income taxes, each county being expressed as a proportion of the total for the nation.

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velt vote and the economic index vary greatly from state to state. This conclusion suggested the desirability of making some inquiries for some of the agricultural states in the Middle West.

For this purpose, Kansas (33 counties), Iowa (65 counties), and Nebraska (30 counties) were chosen. In all three of these agricultural states of the Middle West, the correlations of the Roosevelt vote and the economic index were positive. In other words, the counties with the higher incomes voted more for Roosevelt and the counties with the lower incomes voted less for Roosevelt. This result is quite contrary to expectations. The coëfficients of correlation in Kansas were +.01 and +.37 for 1932 and 1936, respectively. In Iowa, they were +.11 and +.31, and in Nebraska, +.19 and +.51. In all cases there was a tendency for the richer agricultural counties to vote more for Roosevelt in 1936 than in 1932. It is seen, therefore, that the farms and cities of the Middle West do not react according to popular opinion of the situation throughout the country. The difference may be due, of course, to the fact that these are predominantly farming states. It was therefore desirable to correlate the index of farm value and the Roosevelt vote for the counties (this would, of course, include the town votes too). The correlations were found to be as follows: Kansas −.26 and +.13; Iowa +.25 and +.39; Nebraska +.34 and +.37. It would seem, then, that the well-to-do farmers of the Middle Western states tended to vote more strongly for Roosevelt in 1936 than in 1932.

Realizing the possible inadequacy of the economic index in marking the cleavage between the rich and the poor, we may again have recourse to the per cent of the population paying income tax. When the Roosevelt vote is correlated with the income tax payers, there seems to be a tendency from 1932 to 1936 for the counties with more income tax payers to vote more in favor of Roosevelt. In Kansas, the correlations were −.16 and +.29; in Nebraska, +.21 and +.40, and for the 65 counties in Iowa, −.13 and −.16. Thus there was not very much change. But if all the counties in Iowa are included in the correlation, it becomes −.14 and +.16, which puts Iowa in line with Kansas and Nebraska in the tendency for the counties with the larger number of income tax payers to vote more for Roosevelt in 1936 than they did in 1932.

The indications so far show that for these farming states of the Middle West the well-to-do farmers voted increasingly for Roosevelt. This is somewhat supported by the correlations between the Roosevelt vote and the A. A. A. payments per farm, which are +.47 for Kansas, +.22 for Iowa, and +.18 for Nebraska in 1936. For these three agricultural states, the conclusion seems to be, first, that the economic index which we have used did not present a sharp cleavage between the rich and the poor; and second, that there is no great difference among these three states, but that there is quite a bit of difference between this group and that of Indiana,

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Illinois, Ohio, and Pennsylvania. Furthermore, the well-to-do counties in these agricultural states seem to have voted more strongly for Roosevelt in 1936 than in 1932.

Still another state may be mentioned. We have chosen California from the Pacific Coast. For the 28 counties used in this study, the economic index was correlated with the Roosevelt vote to the extent of −.18 in 1932 and +.18 in 1936. Again the differences in the correlations are rather low. The indications are, however, that the wealthy counties tended to vote more for Roosevelt in 1936 than in 1932. The correlation of the Roosevelt vote with the per cent paying income tax did not change these conclusions significantly, the correlations being −.19 and +.02. (For all counties in California, the correlations are −.26 and +.11.) These figures are also supported by the correlation between A. A. A. payments per farm and the Roosevelt vote, which was +.35. California, then, reacted in its voting behavior very much like the agricultural states of Iowa, Kansas, and Nebraska. California is, of course, largely an agricultural state, though the political organization of the Democratic party in this state is no doubt considerably different from that in the Middle Western states.

The analysis so far has been made on differentials between the counties in existing economic status. It is possible to approach the economic influence on the Roosevelt vote, not by differentials in the economic status, but by differentials in change in status. For instance, from 1932 to 1936 the average earnings in wages in some Illinois counties declined, while in others it increased. What we would want to know is whether those counties where the wages increased most, or declined least, gave a smaller or a larger vote for Roosevelt. For Illinois, on the average, an increase in wages was accompanied by a decline in the Roosevelt vote; or, in other words, a decline in wages was accompanied by an increase in the Roosevelt vote. The coëfficient of correlation between the shift in vote and the shift in wages was −.23—negative, but small. This result, that a decline in wages was accompanied by an increase in the Roosevelt vote, as shown by the negative correlation, is found to be true in all of the states that we have studied, except for Kansas, where the correlation was +.26 and California, where it was +.41. All the correlations were small, however. In two states, Kentucky and Tennessee, from another political area, namely the border-line South, the correlation between the shift in vote and the shift in wages was −.10 and +.24, respectively. Thus in seven states the correlation of the shift in wages and the shift in vote was negative, and in three states it was positive. The negative correlation is, of course, in agreement with popular opinion on the subject. Why in three of the states an increase in wages should be accompanied by an increase in the Roosevelt vote is not clear. It is quite possible that political changes based upon other factors than economic ones may have been important

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in California, Kansas, and Tennessee. It is quite possible that the shift in wages, being different from an increase in income in the high income brackets, may be quite truly correlated with an increase in the Roosevelt vote, especially if the Roosevelt policies were successful in getting the higher wages. It is recalled, of course, that the shift in votes is for all of the voting population in the counties, while the shift in wages is for the areas outside of the farming areas, that is, for the towns and cities.

In two states, Kansas and Iowa, an increase in farm value was accompanied by a decrease in the Roosevelt vote, the correlations being −.18 and −.32. In Nebraska, however, an increase in farm values was positively correlated with an increase in the Roosevelt vote. In California and Tennessee, the correlations of the change in farm values with the change in the Roosevelt vote were negative, −.20 and −.60, while in Kentucky the correlation was +.13. The signs of the correlations were not changed when various secondary variables, such as age of the population, per cent non-farm, per cent of adult population on W. P. A., amount of A. A. A. payments per farm, were held constant.

Another index of this shift of economic level, which would include both town and country, was computed by combining the percentage increase or decrease in wages with the percentage shift in farm value. When this index was correlated with the percentage shift in the Roosevelt vote, it was found that Illinois, Indiana, Ohio, and Pennsylvania had negative correlations (−.15, −.23, −.03, and −.04, respectively) and that the more distinctly agricultural states, Kansas, Iowa, Nebraska, and California showed positive correlations (+.39, +.01, +.32, and +.24, respectively). Thus it is concluded that in the more industrial states of the Middle West and East an increase in economic level, as measured by this combined index of wage and farm value shift, was accompanied by a slight decrease in the Roosevelt vote, while the opposite was true for the Western agricultural states.

In the course of the study, one or two other factors relating to the Roosevelt vote have been observed. Somewhat interesting is the per cent of the population on W. P. A. in 1936. It is sometimes said that we do not bite the hand that feeds us, or that we do not vote against Santa Claus. Hence it would be interesting to see whether the counties that had the largest per cent on W. P. A. gave the greatest votes for Roosevelt. Such seems to be the case in Pennsylvania, where the correlation is +.30, in Illinois +.63, in Indiana +.37, in Kansas +.15, in Nebraska +.01, and in California +.20. In Iowa and Ohio, however, the correlations were negative, −.10 and −.09. The trend of these correlations is according to expectations, but it should be observed again that the correlations are fairly small, with the exception of Illinois, and possibly Indiana, where the correlations are +.63 and +.37.

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Another factor that was interesting in its correlation with the Roosevelt vote was the age of the population. The index used was the per cent of the voting population that was over 45 years of age. In the counties where the age of the population was greater, as measured by this index, there was a higher vote against Roosevelt. This was true in all the states in the study except Illinois, where the correlation was zero, and in California where it was +.01 in 1932. Furthermore the correlations were higher for age than for the economic index and the Roosevelt vote.[5] The correlation of age and the Roosevelt vote were consistently higher for 1936 than for 1932. Perhaps the agitation by Mr. Townsend had become more acute at that time.

Other studies, particularly those by Mr. Gallup,[6] show that the older persons in the population tend to be less in favor of Roosevelt than is the younger element. The age factor, however, has not so far, we believe, been studied from the point of view of the economic conditions. In general, we know that the cities which have a higher economic level tend to have smaller numbers of old people in them. Some interest, therefore, attaches to the correlation of our economic index with the age index, namely, the per cent of the voting population which is over 45 years of age. These correlations are, with the exception of Indiana, negative. For the various states in 1932 and 1936, respectively, they are: Pennsylvania, −.40 and −.20; Ohio, −.22 and −.23; Illinois, −.15 and −.25; Indiana, +.10 and +.24; Kansas, −.57 and −.66; Iowa, −.40 and −.57; Nebraska, −.19 and −.49; California, −.12 and −.22. It would thus appear that the counties which have the largest per cent of old people are in general of slightly lower economic status. It is therefore of interest to inquire whether the influence of age against the Roosevelt vote is to be explained by the fact that the old people seem to be in the poorer counties. When the economic factor is held constant, the correlation of the age factor with the Roosevelt vote is reduced slightly, but the negative signs are not changed.[7]

Similarly, we want to inquire whether the reason for the counties with the lower incomes voting for Roosevelt may not be the fact that the counties with the lower incomes have more old people in them. It may be found that age, rather than income, is responsible for the counties with the lower incomes voting for Roosevelt. Such seems to be the case in Kansas and Iowa. In these two states, it is recalled, the counties with the higher

[5] The correlations between age and the Roosevelt vote for 1932 and 1936, respectively, were: Pennsylvania, −.30 and −.54; Ohio, −.32 and −.56; Illinois, +.04 and +.06; Indiana, −.44 and −.53; Kansas, −.25 and −.74; Iowa, −.40 and −.57; Nebraska, −.19 and −.49; California, +.01 and −.04.

[6] American Institute of Public Opinion, Dec., 5, 1939.

[7] The partial correlations for the various states are: Pennsylvania, −.52; Ohio, −.57; Illinois, −.14; Indiana, −.49; Kansas, −.71; Iowa, −.50; Nebraska, −.36; California, .00 (figures for 1936).

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economic index voted more for Roosevelt in both 1932 and 1936. But the correlations were almost negligible in 1932 (+.01 and +.11) and about +.37 and +.31 in 1936. When the age factor is held constant, the correlations between economic status and the Roosevelt vote become negative, though small: −.16 and −.22 for Kansas in 1932 and 1936, respectively, and −.21 and −.03 for Iowa. In other states, the change in the signs of the correlations did not occur, nor were there any significant changes in the size of the correlations. In Illinois, for instance, the correlations remained almost the same, as they did also in Indiana.[8]

We concluded, therefore, on the question of age, that the reason why the old people tended to vote against Roosevelt was very slightly influenced by the economic factor, and that similarly the tendency for the poorer counties to vote for Roosevelt is very slightly affected by the fact that the poor counties have more old people.

An incidental comment may be of some interest. In a few of the states, we correlated the Roosevelt vote with the Democratic vote for governor by counties. The correlations were higher in 1936 than in 1932. In Pennsylvania, for instance, the correlation in 1932 was +.63 and +.91 in 1936. In Ohio it was +.76 in 1932, but +.96 in 1936. Similarly in Indiana and Illinois the correlations were +.91 and +.84 in 1932 and +.95 and +.97 in 1936. This may mean that the Democratic party was more closely knit in these states in 1936 than in 1932. Since in general the Roosevelt vote was larger than the governor vote, it may indicate that the Roosevelt influence was important in the governor vote.

Conclusions. The economic index, designed to show differentials in certain average counties (selected according to population and the per cent of the working population engaged in industry and business) in economic levels, indicated a very slight relationship with the Roosevelt vote, but in general the poorer counties tended to vote more for Roosevelt. In interpreting this conclusion, it is important to realize that this economic index does not segregate out very satisfactorily the very small fraction of the population that received over $5,000 or $10,000 income. It is possible that if the population could have been divided into two groups, that receiving over $10,000 income and that receiving under $10,000 income, the correlations might have been higher. When the correlations were made, not on the basis of economic level, but on that of the per cent of the population paying income tax, the results were not very different from those observed when the correlations were made between the Roosevelt vote and the economic index. This result may be compared with that of the Gallup

[8] The partial correlations for 1932 and 1936 respectively are: Pennsylvania, +.15 and +.10; Ohio, +.23 and −.11; Illinois, −.67 and −.67; Indiana, −.34 and −.30; Kansas, −.16 and −.22; Iowa, −.21 and −.03; Nebraska, +.12 and +.38; California, −.18 and −.17.

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poll for 1936, when the voting population was divided into three groups on the basis of income. In the upper third of the population, 47 per cent were for Roosevelt, while in the lower third 75 per cent were for him. Thus nearly twice as large a per cent of the population in the lower third voted for Roosevelt as did so in the upper third. The correlation, however, was −.21, quite in line with those found in this study.

The statistics in this article and those of Gallup support the popular opinion that the poor tended to vote for Roosevelt and the well-to-do against him, but they provide a very valuable check in numerical measurement. The actual measurement seems to indicate that the differentials between the social classes may not be so great as might be inferred from talking with a member of either the extreme upper or the extreme lower income groups.

This study was undertaken also to see whether there was very much of a shift of voters along economic lines between 1932 and 1936. The correlations indicate a very slight, almost negligible, shift. That it was so slight was somewhat unexpected. It may have been due to the fact that the economic cleavage precipitated by Roosevelt might not have been felt by the population in 1936. After all, Roosevelt carried all the states but two, so he must have been quite popular. The Gallup poll has measured the shift of the economic classes in regard to Roosevelt since 1936, as reported a year later. The shift was practically negligible. For instance, in 1936 in the Gallup poll 47 per cent of the upper third of the population voted for Roosevelt and in 1937 46 per cent of this same group said they would vote for him. In the lower third of the population, 25 per cent voted against Roosevelt in 1936 and 23 per cent said they would have voted against him in 1937. Neither Mr. Gallup's method of measuring the population differentials nor that used in this study indicates any tremendous shift in economic cleavage regarding Roosevelt. It is possible that if only groups receiving over $10,000 and those receiving under $10,000 a year had been studied, a greater shift would have been observed. In any case, both the Gallup poll and this study showed no great cleavage along economic lines which Roosevelt may have precipitated.

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The Formation of Great Britain's "Truly National" Government. The events of the days of May, when Parliament replaced the "National" Government of the third Chamberlain by the "truly National" Government of the third Churchill, illustrate the danger of simple explanations of the working of the British constitution. The notion that responsible government could be expressed in terms of Parliamentary "control" of the Government in power has disappeared. There has been, however, a tendency to replace it by the equally naïve explanation of Governmental control of Parliament. The truth lies in between. On the one hand, it must be recognized that, through the party machine, a Government with a majority has very substantial powers of control. On the other hand, it must equally be recognized that public opinion, acting through members of Parliament, has a profound influence on the policy of the Government. The precise relationship has never been fully investigated, because the British electoral machine has never been adequately studied.[1] It is doubtful if it can ever be adequately expounded, because, like so many parts of the British constitution, it depends upon intangible elements which do not lend themselves easily to demonstration.

It is certainly true that, during the past 75 years, Governments with majorities in the House of Commons have rarely been destroyed by the House. The following is a summary:

1866: Liberal Government with a majority defeated in the House on the Reform Bill.

1868: Conservative Government in a minority defeated in the House on the Irish Church: dissolved Parliament and, being defeated, resigned without meeting Parliament.

1874: Liberal Government with a majority defeated at the general election and resigned without meeting Parliament.

1880: Conservative Government with a majority defeated at the general election and resigned without meeting Parliament.

1885: Liberal Government with a majority defeated on the Budget, and resigned: but the defeat was really due to internal dissensions in the Cabinet over Ireland.

1886: Conservative Goverment without a majority failed to get one at

[1] The present writer has tried to explain some aspects of the problem, especially in *Cabinent Government* (Cambridge and New York, 1936), Chap. XIV ("Government and Parliament"), and *Parliament* (Cambridge and New York, 1939), Chap. V ("The Art of Management"). Other aspects are being studied with as much concentration as is possible in a country at war. Some tentative suggestions, too general to be wholly accurate, will be found in *The British Constitution* ("English Institutions Series"), Chaps. I and II, to be published by the Cambridge University Press (air raids and paper supplies permitting) early in 1941.

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the general election and was defeated on a "three acres and a cow" amendment to the Address.

1886: Liberal Government without a majority defeated on Home Rule, dissolved Parliament, and, failing to get a majority, resigned without meeting Parliament.

1892: Conservative Government without a majority, but supported by the Liberal Unionists, was unable to get a Unionist majority at the general election, and was defeated on a no-confidence amendment to the Address.

1895: Liberal Government without a majority, but supported by the Irish, defeated on the cordite vote; this was a snap vote which was seized upon as an excuse on account of internal dissensions, and the Government resigned.

1905: Unionist Government with a majority defeated on the Irish Land Bill, but did not resign or dissolve: resigned later in the year owing to internal dissensions.

1915: Liberal Government in a minority, but supported by the Labour party and the Irish and, after the outbreak of war, by the Conservative party, resigned on being informed that Conservative support was no longer available.

1916: Coalition Government resigned owing to internal dissensions.

1921: Coalition Government with a majority lost it owing to the defection of most Conservative members, and resigned without meeting Parliament.

1923: Conservative Government with a majority lost it at the general election and was defeated on a no-confidence amendment to the Address.

1924: Labour Government without a majority defeated in the House on the Campbell case, dissolved Parliament, and, failing to get a majority, resigned without meeting Parliament.

1929: Conservative Government with a majority defeated at the general election and resigned without meeting Parliament.

1931: Labour Government without a majority resigned owing to internal dissensions.

Formally, therefore, a vote in the House of Commons has compelled the resignation of the Government on six occasions only, in 1866, 1885, 1886, 1892, 1895, and 1923. This is, however, a matter of form and not of substance. On the one hand, the resignations of 1868, 1886 (Liberal) and 1924 must be added, because the dissolution was caused by a defeat in the House. On the other hand, the resignations of 1886 (Conservative), 1892, and 1923 must be subtracted, because the defeat in the House was consequential upon a defeat (or a failure to secure a majority) at a general election. Moreover, the Governments which resigned in 1868, 1886 (Lib-

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eral), 1895, and 1924 were minority Governments. When a minority Government is in office, it is not the House but the third party which determines whether the Government shall stay in office, subject, however, to the right of the Government to choose a dissolution rather than a resignation. With a majority Government, resignation must follow either a defeat at the polls or a defection in its own party. The House can be said to control only in the sense that the members of the majority party or parties can, if they feel so inclined, vote with the Opposition or fail to vote with the Government. Leaving aside all questions of parliamentary form, this happened in 1866, 1885, 1895 (though, strictly, this was a minority Government), 1905, and 1921. The defection of the "Cave of Adullam" in 1866 was merely temporary; it was, in fact, the repudiation of a particular item of Government policy, and the Cave had the chagrin of watching a Conservative Government, supported by the Liberal leaders, pass a more radical measure than that which they had defeated. In 1885, the defection was permanent. It was caused by the raising of the issue of Home Rule, and was due more to dissensions within the cabinet than to a revolt among the rank and file. The defeat in 1895 would not have happened if the Government had had a real majority, and it was due primarily to personal differences between the prime minister and the leader of the House of Commons. The resignation in 1905 was caused by the growing weakness of the Unionist party in the country, especially because of the raising of the standard of tariff reform by Joseph Chamberlain. Finally, though the resignation of 1921 was due to the defection of the rank and file, it was in substance a withdrawal of the Conservative party from the Coalition. Not since 1866 has there been any cause of resignation comparable with that which forced Neville Chamberlain out of office.

The position in war-time is, however, necessarily peculiar. It is not possible to wage a major war if there is a real Opposition. Asquith in 1915 rightly appreciated the position. Though he had a majority in the House, he recognized that he could not carry on without Conservative support. Similarly in 1939–40, Chamberlain could not have continued if the Labour party had taken a firm line against supporting his Government. It decided, however, to act the part of the candid friend. It was said by some Labor speakers that there was no "party truce" but only an "electoral truce"—an agreement not to oppose at bye-elections, and not an agreement not to oppose in the House. This method of expression is not exact. It was made clear by the deputy leader of the Opposition in the debates which preceded the outbreak of war. On August 24, he said: "We are not supporters of this Government, but let no one abroad think that Labour will ever be a willing party to acquiescing in any further acts of aggression. . . . I wish to make it unmistakably plain to those beyond the seas that if, unfortunately, the time comes when this policy has to be imple-

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mented, they will not find here a disunited people. Unity on that issue will be complete."[2] On September 1, he made a similar statement.[3] On September 3, he said: "We share no responsibilities in the tremendous tasks which confront the Government, but we have responsibilities of our own, which we shall not shirk. We have given proof in this Chamber in the past few days that we shall give wholehearted support to the measures necessary to equip this State with the powers that are desired."[4] On September 13, he used the phrase "candid friend,"[5] and went on to describe the functions of the House to be to keep in touch with events, to bring the views of the public to bear upon the actions of the Government, and to raise questions which were troubling the mind of the people.[6]

Those functions the Labour Opposition carried out. From the beginning of September to the beginning of May, there was no debate on the conduct of the war which could be regarded as anything but helpful. There were criticisms on special aspects, especially on what is usually described as the "Home Front." The Opposition in this respect acted as a "ginger" group, pointing out defects of organization, demanding increased effort, drawing attention to specific problems. On matters of social policy not directly connected with the war, however, the full technique of Opposition was brought into play. There was no obstruction; there were no embarrassing debates, and no questions on matters which might assist the enemy. Nor was there any attempt to make party capital except, possibly, on the one issue of the agreement with the railways, when the Labour party could not resist the temptation to advocate nationalization. If this was not a party truce, words have lost their meaning.[7]

It must not be assumed, however, that the debate on the Norwegian invasion was a catastrophe which suddenly caused a change of policy. The criticism of the Government gradually increased in volume and asperity as the war progressed. The conduct of foreign policy from 1931 to Munich left with the Labour party a legacy of suspicion. With many, it was a suspicion of motives. After the invasion of Czechoslovakia, however, the Government went into reverse, and it was then apparent to most of the Labour members (though not to all) that, in their language, Chamberlain was a fool and not a blackguard. From Munich onwards, many Conservatives, more politely, reached the same conclusion. This Conservative opposition was not very vocal, nor was it expressed in votes, but it was apparent. Moreover, it was to be found on both wings. At the one extreme

[2] 351 H.C. Deb., 5s., 12. [3] *Ibid.*, 135.
[4] *Ibid.*, 293. [5] *Ibid.*, 663. [6] *Ibid.*, 670.
[7] See the articles on "Parliament in War-time" which the present writer is contributing to the *Political Quarterly*. The first, covering the period to February 29, appeared in the April–June number; the second, covering the remainder of the life of the Chamberlain Government, will appear in the July–September number.

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were Churchill, Amery, Duff Cooper and (less obviously) Eden; at the other were the members who rely on lower middle class votes, such as Harold Macmillan, Boothby, and Richard Law. The right wing was not entirely reassured by the taking of Churchill and Eden into the Government at the outbreak of the war. The element of suspicion therefore continued.

Moreover, the Labour party found it impossible not to be more candid than friendly. The British Parliament really has no place for candid friends. It recognizes friends and opponents. In war, there can be no opponents unless, like Maxton and Pritt, they oppose the war. There were really two courses of action available, and not three. The one was to join the Government and the other to oppose it. The equilibrium of the first eight months of war was necessarily unstable. Norway was the occasion, but not the cause. Indeed, it is now clear that if the Government could have stated its case without giving information to the enemy, it would not even have been an occasion. It is reasonable to assume that the invasion of Denmark and Norway was a decoy, intended to draw British forces from the projected attack through Holland and Belgium, and that the vigilance of the Allied Intelligence was responsible for the British withdrawal. Nevertheless, those who supported the Opposition were not concerned only with the Norwegian failure. Parties do not split because of single mistakes. The issue which led to the division of May 8 was the general capacity of the Government. Munich, supply, economic organization, food production, Finland, the budget, were all steps in the development of the decision to oppose.

It must also be emphasized that what caused the downfall of the Government was not the votes of 43 supporters of the Government, but the decision of the Labour party to divide. It is true that Chamberlain did not immediately realize the position. He has none of that parliamentary sense which makes a great leader. He is not skilled in the art of managing the House, nor is he able to seize rapidly the essence of a parliamentary situation. His appeal to his "friends" was rank foolishness. Such an appeal in the circumstances was blackmail, which necessarily turned critics into opponents. More than that, it was ridiculous. To continue to govern with a majority is impossible in war-time. He had lasted for eight months through the forbearance of the Labor party. The decision of that party to oppose in itself demanded his retirement. Even if all his nominal supporters had obeyed the whip, he would have been compelled to resign. The size of his majority was no doubt relevant in determining whether or not to try to form a Chamberlain coalition; it was quite irrelevant to the issue of the disappearance of the National Government as such. The Labour party could not withdraw its support without good cause, because it would have lost whatever reputation it had gained for political sagacity.

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Once there was a cause, its determination to oppose was decisive upon the fate of the Government.

It was, too, the special factor of the war which enabled the House to remove a prime minister without disturbing the party situation. The Conservative party normally has to bear with its leader until death or disease removes him. With this fact in mind, some of those who had little respect for Chamberlain did not see how he could be removed without sending him into opposition. The obvious remedy was a party intrigue; but, in the first place, it was not easy to find a Lloyd George ready to start the intrigue or a Bonar Law to follow him, and, in the second place, it was certain that the result of a successful intrigue would be for Chamberlain to follow Asquith's example. Once it became plain that the Labour party would support, or even join, a Government based on a Conservative majority, the method was plain. The support of that party was essential; therefore it could make conditions. These conditions, be it noted, did not relate only to the prime minister. The complaint was against the "Munich triumvirate"—Chamberlain, Simon, and Hoare. This fact, incidentally, shows again that Norway was the occasion and not the cause. If blame was to be allocated for the Norwegian failure, it must go to Chamberlain, Churchill, Stanley, and Burgin, in that order.

These considerations suggest that the distribution of votes in the division was not important. It is, however, worth while to find out if any conclusions can be drawn from the voting. In the table which follows, the third column may not be quite accurate. It omits the speaker and the chairman and deputy chairman of committees, who do not vote, and no attempt has been made to find out the number of seats vacant. It seems, however, that there are about five members not accounted for. It may be assumed that they should be placed among the supporters of the Government who did not vote.

PARTY DISTRIBUTION

	For	*Against*	*Absent Unpaired*
Conservative	251	33	65
Liberal National	20	4	7
National Labour	4	2	–
National	2	2	–
Independent	4	6	4
Labour	–	138	8
I.L.P.	–	–	3
Liberal	–	15	2
	281	200	89
Tellers	2	2	
Paired	15	15	
	298	217	89

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The absence of a member unpaired does not necessarily imply that he deliberately abstained from voting. There were many who obviously did so; but many members are on active service, and others were absent without being able to find pairs. The six members classified as independent who voted against the Government included three who usually vote with the Opposition on foreign affairs, as well as the Communist member who votes against everybody. The other two independents who voted against the Government usually vote with it. The number of Government supporters who voted with the Opposition was therefore 43.

These 43 members fall into two main groups. First, there was a group containing nearly all the members who have been ministers in Conservative or National Governments—Amery, Duff Cooper, Lord Winterton, Lord Wolmer, and Hore-Belisha. It was claimed that all the privy councillors who were not ministers voted against the Government. The statement is not quite accurate. Three non-ministerial privy councillors voted with the Government. Nevertheless, they prove the rule, because one was a forestry commissioner who held political office but was not a minister, another is chairman of the Conservative party organization, and the third is a Liberal National. It is not necessary to suggest that the "ministers out of office" voted against the Government in order to get back into office. Except for Hore-Belisha, whose elastic opinions permit him to be classified in any way, they belong to the right wing of the party which, under Churchill's leadership, hammered at the Government long before the formation of the war cabinet. With them must be placed a number of back-benchers who have given them support in the past or have come around to their point of view as a result of experience in the armed forces. It has been pointed out by observers that the young men in uniform marched into the Opposition lobby. It may be assumed that about half of the 43 members belonged to the right wing "ginger" group.

The other group consists of the left wing of the Conservative party. Some of them came in 1931, to their great surprise, for seats which, in the normal course, would have become Labour. Most of them hold seats which would become Labour, or at least Liberal, if the political pendulum swung a little further than it did in 1935. Among them were 18 members whose seats were retained by the Government in 1935 by mere pluralities in three-cornered fights, or by majorities of less than 6,000. It is not suggested that they take their opinions from their constituencies; but the fact is that left-wing "Nationals" gravitate to industrial or lower middle-class seats and that seats of that kind gradually convert their members to opinions not far removed from those of the right wing of the Labour party. It is also worth noticing that of the 32 supporters of the Government elected to the House since Munich, 19 (including two ministers and several holding absolutely safe seats) voted with the Government, four voted against, and nine did not vote.

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It follows that the great mass of those who voted for the Government belonged to the center of the Conservative party, or belonged to the minor groups in such a way as to be entirely dependent on the Conservative party machine. It must be emphasized that they included 53 ministers and whips. Moreover, nearly every minister has a parliamentary private secretary who follows the ministerial tradition of voting with the Government. Adding those who hold political or party office without being ministers, the number of ministerial voters, in the widest sense, cannot have been much less than 100. This brings the vote of strictly private members for the Government down to about 180; but, of course, no emphasis must be placed upon this figure, because the Opposition vote included the former ministers and the whips of the Labour and Liberal parties.

It may be interesting to take the National Labour and Liberal National groups separately. They are in a peculiarly difficult position because they have not, and cannot have, any organization worth speaking of. They recruit by finding able persons whose opinions are Conservative, or who have no very fixed opinions, and offering them an easy entrance to the House of Commons. They are able to hold seats, however, only by the forbearance of the Conservative party, and in the last resort their future lies in membership of that party. Accordingly, they contain some of the most vocal of the "yes-men," though they also contain a few very able persons. The smaller the majority in 1935, the more dependent they are upon the Conservative machine. One would expect, therefore, that whereas Conservatives with small majorities would vote with the Opposition, Liberal National and National Labour members with small majorities would vote with the Government. Let us see if this analysis works out. In the following list, the majority in 1935 is given, except for ministers:

NATIONAL LABOUR

For	*Against*
Denman (minister)	Nicolson, 100
Lindsay (minister)	King-Hall, 6,000
MacDonald (minister)	
Bennett, 4,900	
Markham, 4,600	

LIBERAL NATIONAL

For	*Against*	*Did not Vote*
Reith (minister)	Butcher, 11,900	Aske, 6,800
Beechman [200][8]	Medlicott, 12,700	Edge, 7,100
Bernays (minister)	Hore-Belisha, 11,100	Furness, 16,600
Brown (minister)	Stewart, 21,900	Granville, 14,000
Burgin (minister)		Holmes, 12,600
Dodd, 400		Morris-Jones, 5,000
Fildes, 10,400		Peters, 9,400

[8] Bye-election. His predecessor was unopposed for special reasons.

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Jones, 2,000
Kerr (minister)
Lambert, 15,100
Schuster, 9,000
Mabane (minister)
Macdonald, 7,700
Magnay, 2,900
Morrison, 3,700
Russell, unopposed
Shakespeare (minister)
Simon (minister)

Considering the comparatively small number of members, the analysis works out very well, particularly because most of the exceptions can be explained on other grounds. All explanations of the voting must, however, be subordinated to the main explanation, that members of Parliament had come to believe that a change of Government was necessary. In spite of his parliamentary *gaucherie*, Chamberlain managed to acquire a very substantial personal support in the House of Commons. He represented the ordinary, honest, not very intelligent, hard-working, business man. He had none of the brilliance, imagination, or intellect of Churchill. But he was "safe." He was Birmingham and not Brummagem, steel and not *ersatz* gold. That he could obtain 281 votes in the House of Commons after eight months of war is a tribute to the loyalty and steadfastness of his followers; but it is also evidence of the nonchalance, the slowness, and perhaps the inefficiency, with which we always begin even a major war. What Britain needs to get stirred up is not a kick in the pants but a punch on the jaw—and at the moment of writing it looks as if it is getting it. The one piece of good fortune so far is that Hitler feinted with his right before he jabbed with his left.

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The British Dominions and Neutrality. Under the ordinary circumstances of peaceful relations with other states, the peculiar position of the Dominions in the British Commonwealth of Nations may be of little importance. Except to those insistent on the point of national pride, it makes little difference whether foreign Powers have or have not recognized the independent and sovereign character of the Dominions so long as they understand that the responsible governments with which they are dealing are the several ministries in the Dominions. Both external and internal autonomy has undoubtedly been attained by the Dominions in all normal peace-time affairs, and this situation has been recognized by other states. It matters little whether other states take seriously the symbolism of the Crown and the unity of the kingship or whether they regard these as among the odd aberrations of British illogicality. In war-time, however, a very different position is presented when one considers the status of the individual members of the Commonwealth.

The sovereign rights of war and neutrality are not necessarily two aspects of the same power. The war power is capable of unilateral exercise; a state of war is brought into existence by the action of one state, and the legal consequences of belligerency follow automatically and indeed may be claimed by political associations or communities which are not recognized as sovereign states. Neutrality, on the other hand, is essentially a status dependent on multilateral acceptance; if neutrality is proclaimed, it must be accepted by both belligerents and other neutrals in order that the legal consequences may be obtained. If neutral rights are not admitted by a belligerent, the would-be neutral may be compelled to sever relations or to resort to war. But in the case of the British Commonwealth the subjects of war and neutrality are peculiarly intertwined, partly because of the uncertainty as to the separate statehood of the members, and partly as a result of the continuance of certain doctrines of a common British nationality and of a common Crown. In a word, there can be no right to separate neutrality in the British Commonwealth if the entire Empire is placed at war by the action of one government of the Empire. The issue of Dominion neutrality is therefore a touchstone of the existence of the Empire-Commonwealth as a single state in war both in terms of its own law and in the categories of international law. This dilemma has been debated within the Empire for twenty years: if the king is head of the state, there is no opportunity for one part to be neutral when the rest is at war; if the nationals of one of the members of the Commonwealth claim to remain on friendly terms with the king's enemies, they cannot be subjects of His Majesty.

It must be clearly understood that any discussion of neutrality in the British Commonwealth is on a different plane from the subject of the ex-

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tent of Dominion participation as a belligerent. No matter whether the Empire is at war as a unit or in parts specifically proclaiming war, the nature of Dominion autonomy in military matters leaves to the individual members of the Commonwealth full determination of the kind of participation they desire. It has long been possible for the Empire to be at war but for the several units to assume varying degrees of active belligerency, and even to assume the rôle of passive belligerency. The raising of troops, the equipping of warships, and the levying of taxes for war purposes cannot be performed in any self-governing community without the initiative and concurrence of the local organs of government. The Dominions also won, in the World War, the right of conducting their military expeditions as separate national armies if they so desired. But these questions have no connection with the more fundamental problems of high politics and law: Are the Dominions automatically at war when the United Kingdom of Great Britain and Northern Ireland is at war? Can the individual Dominions declare war independently without involving the other members of the British Commonwealth? May any member of the Commonwealth remain neutral when the other portions of the Empire-Commonwealth are at war?

The declaration of war or the announcement that a state of war exists is a unilateral act, as has already been remarked, from which certain consequences flow in international law. The rights and obligations of a state at war continue until the conclusion of peace. Peace, it is needless to add, is at the very least a bilateral agreement, usually, if not always, effected by treaty. In the British Commonwealth, both the declaration of war and the conclusion of peace are technically prerogatives of the Crown; that is, they are performed by the king as head of the state in accordance with the formalities and conventions of the constitutional law of the Empire. On the previous occasion of the outbreak of war (1914), there is no question but that the entire Empire was placed at war by the action of the king as advised by the ministers of the United Kingdom. But the conclusion of peace in 1919—which could also have been performed by the king and his British advisers—was actually undertaken with the formal and real concurrence of Dominion as well as of British ministers. Since that time, as is well known, a regularized procedure for treaty-making by the individual members of the Commonwealth has been adopted. The right of the Dominion governments to participate in advising the king respecting a general treaty for the whole Empire-Commonwealth may be regarded as guaranteed by the developments since 1919. Whether the separate Dominions could make individual peace treaties with an enemy would, partly at least, depend upon the willingness of the enemy Power to negotiate on such terms. It would also depend on whether the normal peace-time treaty powers of the Dominions carry over into war-time. The

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reason for mentioning this is that neutrality is largely comparable to peace-making—one being the continuance of peaceful relations with a foreign state and the other the resumption of such relations. Like peace-making, neutrality depends on common agreement that the Dominions have control over their status in war. At the same time, however, neutrality—or the full benefits internationally of neutrality—requires acceptance of this status by other neutrals as well as by the belligerents. In this respect, no doubt, other neutral states would follow the decision of the belligerents; for if a Dominion should declare itself neutral, and this be accepted by the belligerents of both sides, quite evidently the Dominion would not be at war and would be entitled to be regarded as a neutral. Here again, one must add, *if* the status of the Dominions in war-time bears analogy to the status in peace-time.

In last analysis, then, the problem of Dominion neutrality in the course of a war in which some members of the British Commonwealth participate centers on the question of whether the apparent disintegration of the Commonwealth as a single state, which was proceeding in the years of peace, is checked by the outbreak of war. Is the war power an exception to the constitutional devolution of the function of government in the British Commonwealth? Do the legal consequences of war—those respecting citizenship, alienage, trade with the enemy, etc.—become effective automatically throughout all the king's Dominions as a matter of imperial and of local law the moment war is proclaimed by the king on the advice of any set of ministers? Let us examine first the possible devolution of the prerogative of declaring war.

For the past seventy years, it has not been customary for the British sovereign to declare war on a foreign Power. A state of war ensues usually as a result of the non-compliance by another state with certain conditions or with an ultimatum containing a time-limit. Legally, this non-compliance establishes a state of war, and such is announced by royal proclamation or order in the official gazette. Prior to 1914, there was no doubt that any action leading to such a position was undertaken solely by the king on the advice of the British cabinet. Since the formulation of the doctrines of Dominion status by the Imperial Conference of 1926, new constitutional conventions respecting advice to the Crown have come into vogue. The phrases of the Balfour Report are too well known to require quotation; their general result is that new conventions—ministerial advice to the king being a convention—establish the right of Dominion cabinets to participate in advising the monarch on all matters involving the Dominions collectively. The negative statement is equally sound—no Dominion is bound by actions of the Crown without the responsibility being assumed by Dominion ministers. These new conventions of Dominion status are as binding constitutionally in the British Commonwealth

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as are the conventions of cabinet government in Great Britain. Have they any legal foundation with respect to the declaration of war or the proclamation of a state of war?

The Statute of Westminister, 1931, which gave legal form to several aspects of Dominion status, made no direct change in the legal position of the monarchy. But under the Statute it did become possible for a Dominion to affirm, both as a matter of convention and as a matter of law, that when the prerogatives of the Crown are exercised for any purpose relating to that Dominion they must be exercised upon the advice of the Dominion ministers. This was accomplished for the Union of South Africa in no uncertain terms by the Status of the Union Act, 1934, and the Royal Executive Functions and Seals Act, 1934. In South African law, then, no act of the king which the South African ministers did not advise could put South Africa into a state of war. This position was attained also for Ireland (Eire) by the Executive Authority (External Relations) Act, 1936. In Irish law, the king can act for Ireland only while advised by Irish ministers. Moreover, the constitution of 1937 contains the following specific provision: "War shall not be declared and the State shall not participate in any war save with the assent of Dáil Eireann" [Article 28 (3)]. If this constitution is valid, the royal prerogative of declaring or proclaiming war has thus been abrogated and transferred to the lower house of the legislature. There is no good reason for believing that the constitution of 1937 is invalid, for when it came into effect the British Government's statement of December 30, 1937, simply announced that they "were prepared to treat the new Constitution as not effecting a fundamental alteration of the position of . . . 'Ireland,' as a member of the British Commonwealth of Nations." Canada, too, had passed a Seals Act in 1939, preparatory to the royal visit; but this act was permissive rather than mandatory and was designed to obviate the necessity for, instead of forbidding, British ministerial intervention in formal documents.

On the face of it, therefore, two, if not three, members of the British Commonwealth had taken the legal steps requisite to provide themselves with autonomy in the declaration of war. The position of the other Dominions is more obscure, for no legal alterations of status had been effected. Divergent and contradictory opinions were held in most of the other Dominions both as to the unity of the Crown in international and constitutional law and as to the political responsibility of Dominion ministers for advice to the king. For some twenty years, the question had been canvassed in somewhat academic terms; for twelve months, it had been an issue of paramount importance. It is evident, of course, that no constitutional or international problem would arise if the Dominions and Great Britain pursued a policy upon which all were agreed. If Great

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Britain entered a war supported by all the Dominions, they could each make their declarations of war in any form they desired, and it would be almost a matter of indifference to the world whether this was done individually or collectively. The problem of neutrality would arise only from a failure to maintain the common diplomatic front of the Commonwealth.

It is unnecessary to hold a post-mortem on the decay of the League of Nations—in which the Dominions, Great Britain, and India had individual membership—and the controversy over the Munich "appeasement" policy. The diversity of advice which might be tendered to His Majesty by the several Governments of the British Commonwealth became markedly evident early in 1939, and especially when the abandonment of appeasement by the British Government made the possibility of war turn into a probability. On February 21, 1939, Mr. de Valera had definitely announced Ireland's intention of remaining neutral. In Australia and New Zealand, on the other hand, the leaders were no less definite in their complete endorsement of war when Britain was at war. This had been officially stated as the Government policy in Australia by Mr. Lyons on March 17. The same sentiments were expressed by his successor, Mr. Menzies, on April 26, 1939. These same opinions were again announced by Mr. Savage in New Zealand, where at that very time the Pacific Defense Conference between Great Britain, New Zealand, and Australia was being held. There was greater doubt as to the course of action in the Dominion of Canada and the Union of South Africa. In both of these Dominions, the Governments of the day asserted that the issue of war or peace was to be determined by the Dominion parliaments. This, it has sometimes been asserted, was evading the problem, for it is the duty of the ministry to guide the deliberations of Parliament. In South Africa, for instance, the coalition hesitated to make clear its known or suspected division of opinion. On August 25, 1938, Mr. Smuts, deputy prime minister, declared that South Africa could not stand aside in case of war, but that she would not be automatically at war as in 1914. Following him, Mr. Hertzog, the prime minister, said that Mr. Smuts had a perfect right to his views about participation in war, but, as prime minister, he (Mr. Hertzog) was not going to commit himself, yet the position was as stated—that Parliament would have to decide on the merits of the case when the need arose. Such was also the declared intention of the Canadian Government. As early as 1923, Mr. King had said that Canada's responsibility would be determined by Parliament. On May 24, 1938, he had repeated earlier remarks that Parliament would determine on Canada's neutrality or participation in war. Similar views were expressed in the debates at the end of March, 1939, on foreign policy and on a private member's (Mr. Thorson's) neutrality bill.

It is no part of the present paper to discuss either internal Dominion

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politics or the nature of British Commonwealth consultation. The Dominions, it has been authoritatively asserted several times, were kept fully informed of the progress of diplomatic developments in the critical months of 1939; but it is also authoritatively declared that they were not consulted as to policy in the events of the last week of August, 1939. The ultimatum presented by the British Government to Germany requiring the withdrawal of German forces from Poland, and the expiration which on September 3 brought a state of war between Great Britain and Germany, was therefore the exclusive responsibility of the British Government. Whether or not the Dominions are morally bound by the international consequences of a British policy of which they are kept informed, and against which they did not protest (so far as is publicly known), is not pertinent here. That is a question of the nature and procedure of the conduct of foreign relations in the British Commonwealth. The comparison with the Chanak episode of 1922 throws little light on the matter, as the legal and constitutional position of the Dominions has completely changed; and in any case the issue there was the resumption of hostilities against Turkey rather than the outbreak of a new war.

So far as treaty obligations of the Dominions to aid Poland are concerned, the following is the situation. The Anglo-Polish pact of mutual assistance, signed on August 25, 1939, was not in the treaty-form agreed upon at the Imperial Conferences of 1926 and 1930. Instead of being made between heads of states (in the name of the king of Great Britain, Ireland, etc.), the pact was an "Agreement of Mutual Assistance between the United Kingdom and Poland." Accordingly, since this Agreement is made only by the British Government, it does not contain the usual reservations (in British treaties made in the name of the king) providing for the exemption of the Dominions from the terms unless they express a desire to adhere by special action of their own. No Dominion was therefore a party, or expected to be a party, to the Agreement. If, as a result of this mutual assistance pact, Great Britain became engaged in a war, the attitude of the Dominions was as already described—Ireland intended neutrality, New Zealand and Australia would be at war, and Canada and South Africa would leave it to their parliaments to decide. The question now is: What did actually occur?

The issue was solved abruptly in three cases. On the advice of their respective ministries, the governors-general of Australia and New Zealand immediately proclaimed a state of war, on September 3, 1939. In Ireland, Mr. de Valera told the Dáil on September 2, 1939, that the German minister had called on him to explain that Germany would regard Ireland as neutral if she adhered to a policy of neutrality. Mr. de Valera said he had replied that Ireland would follow the policy declared on February 21, 1939. The German minister has continued to remain in Dublin, as has

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the Irish acting minister in Berlin. More will be said of the Irish problem later.

In South Africa and Canada, the issue of war or neutrality was not settled so expeditiously, due in the first case to political indecision and in the second case to legal indecision or political expediency. At the outbreak of war, the South African cabinet was almost evenly divided. Mr. Hertzog, the prime minister, and five others proposed a pseudo-neutrality; Mr. Smuts, deputy prime minister, and six others insisted on the severance of relations with Germany. Quite apart from internal political problems which are not material here, South Africa's freedom of action was handicapped by her agreement with Great Britain to maintain Simonstown as a base for the British navy. Under these circumstances, it was incredible that South Africa should profess neutrality while permitting her territory to be used for naval purposes by one of the belligerents. Yet it was the declared intention of the Government to leave the decision to Parliament. What could Parliament do? On September 4, the prime minister presented his policy for legislative approval. It is advisable to quote it in full:

"Existing relations between the Union of South Africa and the various belligerent countries will, in so far as the Union is concerned, persist unchanged and continue as if no war was being waged, upon the understanding, however, that existing relations and obligations between the Union and Great Britain or any other member of the British Commonwealth, in so far as such relations or obligations result from contractual undertakings relating to the naval base at Simonstown, or from membership in the League of Nations, or in so far as such relations and obligations result implicitly from the free association of the Union with other members of the British Commonwealth of Nations, shall continue unimpaired and shall be maintained by the Union, and no one shall be permitted to use Union territory for the purpose of doing anything which may in any way impair the said relations or obligations."

To this pseudo-neutrality the deputy prime minister offered an amendment, of which the first sentence alone is significant here: "In the interests of the Union, its relations with Germany should be severed, and it should refuse to adopt an attitude of neutrality in this matter." On the evening of September 5, this amendment was carried by 80 to 67 votes in the House of Assembly. Mr. Hertzog thereupon resigned and a new ministry was constructed by Mr. Smuts; the German minister was handed his passports; and diplomatic relations with Germany were officially severed on September 6.

Three days had elapsed between the outbreak of war between Britain and Germany and the severance of relations between South Africa and Germany. In the case of Canada, a still longer period is declared to have

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elapsed. The Canadian position is peculiar, not because of any serious political obstacle to entry into the war, but because of the curious legal devices which were employed. On September 1, 1939, i.e., before Britain was at war, a proclamation was issued in the name of the king ("by and with the advice of Our Privy Council for Canada") under the authority of the War Measures Act of 1914 declaring that "apprehended war exists and has existed as and from the twenty-fifth day of August, one thousand nine hundred and thirty-nine." The state of "apprehended war" apparently existed on September 1, because German troops had then crossed the Polish border, whereupon the first British ultimatum was addressed to Germany; it was apparently made retroactive to August 25 because war could have been anticipated, after the Anglo-Polish mutual assistance pact of that date, at any time Germany invaded Poland. Ten days elapsed between the proclamation of "apprehended war" and the proclamation of a state of war. The official reason for this delay was that the Canadian parliament was not in session and "Parliament was to decide." It may be noted that the parliament of the other great federal Dominion, Australia, was not in session; but in the latter country it made no difference, as the responsible ministry had long made known its intention of immediate participation. The Canadian parliament was summoned for September 7. There was never any doubt as to the course of action which would be proposed by the Government, nor of its parliamentary approval. Government policy as expressed in the Speech from the Throne was for cooperation with Great Britain and France in the war. On the evening of September 9, after both Senate and House of Commons had adopted appropriate addresses in reply to the Speech, the Privy Council prepared a proclamation which was cabled to London for royal approval. Then after receipt of a statement from the Canadian high commissioner in Britain that the king's assent had been secured, there was issued the following morning a royal proclamation "that a state of war with the German Reich exists and has existed in Our Dominion of Canada as and from the Tenth day of September, 1939."

As South Africa had entered the war three days after Great Britain, there is, perhaps, nothing striking about Canada's doing so seven days later than Great Britain. The Canadian position, however, is complicated by other factors. On September 5, an order-in-council had made detailed regulations, under the War Measures Act, governing trade with the enemy. This could not come into effect until war was declared. On the 7th of the month, Parliament had met and the Government had declared its policy, but Parliament had not yet voted approval. Nevertheless, at the opening of Parliament, the Speech from the Throne had contained this sentence: "You will be asked to consider estimates for expenditure which has been or may be caused by the state of war which now exists."

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The next day (8th), a further order-in-council related to trading with the enemy: "During the period from and including the second day of September, 1939, until the date upon which His Majesty the King makes a declaration of the existence of a state of war between Canada and the German Reich, hereinafter referred to as the period of apprehended war, the Regulations respecting trade with the Enemy shall be deemed to be applicable." In other words, during the period of "apprehended war" Germans were to be regarded as enemies, retroactively as well as for the future. When, then, it may be asked, did Canada really enter the war as a matter of law? The royal proclamation states September 10; the order-in-council makes Germans enemies from September 2—a status which is confirmed by assertion in the Speech from the Throne that a state of war "now exists" (September 7).

A review of the events of the first week of September, 1939, shows without any doubt that, so far as the law of the individual Dominions is concerned, the outbreak of war occurred on different dates. In Great Britain, Australia, and New Zealand, a state of war was brought into existence on September 3. In South Africa, the state of war did not arise until September 6. In Canada, war was proclaimed on September 10 (or was retrospectively in existence on September 2—before Great Britain). In Dominion law, therefore, there was possible a period of neutrality—three days for South Africa, seven for Canada. (If the date September 2 is taken for Canada, then the rest of the Commonwealth was neutral for one day.) This divergence has direct royal approval in the case of Canada and its later proclamation. It is evident that the admission of neutrality for one day carries with it the possibility of neutrality for an indefinite period. Any breach in the complete legal unity of the Commonwealth in the creation of a state of war necessarily implies that war can be entered into severally by the Dominions, and that neutrality is likewise a status which can be claimed—if other belligerents concede it.

Neutrality, it was said above, is not merely announced to the world by unilateral action; it must be recognized by belligerents and other neutrals. Now so far as Germany is concerned, the right of Ireland to neutrality has been conceded. This was very properly arranged by the Irish Government prior to the outbreak of British-German hostilities. Ireland had taken no part in the defense arrangements of the British Commonwealth, and by the agreement concluded with Great Britain in 1938 all British rights to the use of Irish ports as naval bases were abrogated. Ireland was therefore morally and politically free to attempt the legal status of a neutral. Not only did Germany concede Irish neutrality—the British position will be mentioned in a moment—but other neutrals have done so. The decisive overt recognition was conferred by the United States of America, in which the neutrality laws required the President

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to proclaim an embargo upon the shipment of arms to belligerents. Ireland was omitted from the list of belligerents issued on September 5, 1939, and has not since been added to it.

Not only has Irish neutrality been accorded recognition, but the short period of Canadian and South African neutrality was recognized also. Whether Germany could have continued to treat South Africa as a neutral may be doubted, yet the fact is that the ministers of the two countries remained at their respective posts until the parliamentary situation was clarified. The American list of belligerents did not include South Africa until after the Union high commissioner at Washington informed the secretary of state on September 6 that South Africa was at war. Canada, on the other hand, did not have direct diplomatic relations with Germany, and in any case the prime minister had declared on September 3 the Canadian intention of coöperating with Great Britain. But even so, Canada was not placed on the American list of belligerents until after the proclamation of September 10. For those seven days, in American law, Canada was a neutral. It cannot be said that the American view was that the entire Empire was at war on September 3, for the list proclaimed on September 5 had specified the United Kingdom, India, Australia, and New Zealand. South Africa and Canada were separately added after the above-mentioned dates.

The diversity of dates from which the state of war was entered by the belligerent members of the British Commonwealth may be compared with the alleged legal divergence in the accession of George VI as king in 1936, the variation then extending from December 10 to December 12. The technically conflicting consequences which were assumed to follow from the abdication of Edward VIII have little practical significance today, since the new monarch eventually acquired statutory acceptance everywhere throughout the British Commonwealth. (There is, however, possible difficulty in the applicability of the British Parliament's Regency Act of 1937.) But the difference in the dates of the legal existence of a state of war in 1939 does have serious practical, as well as important legal, consequences—not for South Africa and Canada, which have since entered the war, but for Ireland, which has not.

The result of the procedure followed in September, 1939, may be regarded as settling for all time the question of Dominion neutrality. Previously it had been a dogma of those who denied the right of neutrality that the attempted exercise of that right would be tantamount to secession from the Commonwealth. This provides another instance of the rigidities of legal theory having to give way to the flexibilities of modern constitutional conventions in the Empire-Commonwealth. Neither the Irish nor the British Government regards Irish neutrality as constituting secession of Ireland (or Eire). Certainly the seven-day neutrality of

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Canada did not constitute Canadian secession, and even if the Canadian position is complicated by the trading-with-the-enemy regulations, the South African three-day neutrality is an additional point for Dominion neutrality without secession. It seems clear now that if any member of the British Commonwealth desires, and if the belligerents are willing, such Commonwealth member may remain neutral and will be recognized as neutral by the other neutral states. Not all Dominions will or can claim such neutrality; they differ in their interpretations of Commonwealth unity, their obligations of military and naval assistance to Great Britain or each other, and in their internal political situations. But these are, it appears, special matters for each individual Dominion. There is good reason to believe that the curious legal procedure adopted in Canada was as much due to a desire on the part of the Canadian Government to establish this constitutional and international principle as to the necessities of internal politics. At any rate, the consequence of the outbreak of war has been to confirm and to publish to the world at large the completeness of Dominion autonomy in declaring war or maintaining neutrality.

The devolution of the war-prerogative has thus been accomplished in the British Commonwealth. The legal unity of the Empire-Commonwealth as a state in international law has been more or less definitely discarded. The British Commonwealth has emerged from the crisis of 1939 as an association of nations which feel a community of interest; it is an *entente* whose members stand in varying degrees of legal, political, and constitutional relationship. There is no need to discuss the question of political responsibility for foreign policy. The very existence of an *entente*, whether founded on sentiment or treaty, carries with it the possibility of entanglement in the responsibilities assumed by the various members. The same is true for all cases of states participating in mutual pacts and regional understandings. Dominion autonomy in external affairs has been demonstrated by their capacity to accept or repudiate the existence of obligations springing from the action of one or more fellow-members. Just as Great Britain and France were not placed at war with Germany automatically upon the invasion of their partner in mutual assistance, Poland, but could and did choose separate times of entering the war, so the members of the British Commonwealth could interpret for themselves their responsibilities when Britain became engaged in war. Portugal, also, has a special connection with Great Britain, in consequence of which she entered the last war; but in September, 1939, she announced neutrality, while at the same time specifically denying that this implied denunciation of her alliance. The members of the British Commonwealth which have entered the war have done so at their own times and in their own fashions. Ireland has not yet—and may never—do so.

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Finally, attention must be directed to the problems which arise from Irish neutrality. There can be no doubt as to the existence of neutrality in law and fact for Ireland. It has been specifically conceded by Germany, officially recognized by the United States, and tacitly accepted by Great Britain. Nothing need be said here of the many serious problems of a political, economic, and military nature which may arise for Ireland and Great Britain as a result of this neutrality. The maintenance of this neutral status may be of great difficulty for Ireland, as it is for other small neutral states contiguous to and overshadowed by a great belligerent Power. But the right to the status is not impaired by the practical difficulties of its preservation.

Ireland's neutral status being conceded, there are a number of legal problems which have to be faced. Legal opinion has generally been slow to adapt itself to the altered status of the members of the British Commonwealth. Certain dogmas have been given such constant repetition by jurists and publicists that it is assumed that British action must conform to these theoretically absolute principles. The "sovereignty of the British Parliament" may still be affirmed without any serious consequences—so long as Parliament takes care not to attempt the exercise of this sovereign authority in regions where it would not be accepted. But can the "unity of the Crown" be asserted if it places His Majesty in states of war and neutrality at the same time? The British Government has been careful not to announce that neutrality implies secession. For one thing, in accordance with Irish law, Ireland is still associated with Britain and the other Dominions and employs the king as symbol of this association. For the time being, Ireland is still regarded as holding some special relationship to the British Commonwealth, an "honorary" membership some wits have called it. The obvious solution is to forget the unity of the Crown and to accept the evident divergence which is inevitable with the existence of several independent cabinets—in war as well as in peace. Yet this theoretical difficulty caused some worry at first in September, 1939. The post of Irish minister at Berlin was vacant. It has been regarded as impossible to have His Majesty accredit another Irish minister to the Reich. For some time, there had been an Irish high commissioner resident in London, but no British representative had been sent to Dublin (as to other Dominion capitals). At the outbreak of war, it was apparently decided that Ireland's neutrality required diplomatic status for the British appointee. But how could the king accredit an envoy to himself? On September 27, 1939, the secretary of state for Dominion affairs announced the appointment of a "representative" to Eire. Such nice questions can be expected to arise in the future as they have in the past—on such occasions as Irish recognition of the Italian conquest of Abyssinia. It may be expected that they will be similarly settled.

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Another legal doctrine from which more serious consequences may flow is that of the common allegiance of British subjects, or, as one may put it in more popular language, the common British citizenship. Inroads upon this doctrine have been made by the establishment of various classes of "nationals" in the Dominions. Ireland, however, was the only one to make British citizenship irreconcilable with her own nationality. In practice, this has been of little significance; for the divergence of citizenships was not enforced in such a matter as qualification for suffrage. This neglect may not long continue. Enlistment in the British army, navy, and police has similarly persisted despite the "foreign enlistment" regulations; but it would be unneutral to allow British uniforms to appear in Ireland. Much more important is the dual nationality of the thousands of Irishmen in Great Britain. There the law relating to treason, sedition, and trade with the enemy must be enforced upon all residents. But since the adoption of compulsory military service (not, however, in Northern Ireland), a special situation is created. For British legal purposes, Irishmen are on the same plane as the nationals of other Dominions. If normally resident in Great Britain for less than the two preceding years, they have not been subjected to conscription. But are not Irishmen—no matter how long their residence in Britain—neutrals? The same problem would arise in any Dominion which should adopt conscription, for there are great numbers of Irishmen overseas. Yet after all, this problem is found everywhere that dual nationality is met with, and it may be solved along the usual lines of compromise. Fortunately, it is apparent that the British and Irish Governments are seeking working solutions for these and other difficult problems rather than the attainment of logical coherence and theoretical absolutism.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

During February and March, Professor Charles G. Fenwick, of Bryn Mawr College, delivered the James Stokes Lectures on Politics at New York University on the general subject of "American Neutrality: Principles and Problems."

In the summer session of the University of Hawaii, Dr. Stephen P. Duggan, director of the Institute of International Education, offered a course dealing with the foreign policies of the Great Powers.

At the University of Pennsylvania, Dr. Charles C. Rohlfing, chairman of the political science department, has been promoted to a full professorship, and Dr. Bradford W. West has been advanced to an associate professorship. At the June convocation, an honorary degree was conferred on Professor James T. Young.

Professor Roger V. Shumate, of the University of Nebraska, is at present devoting full time to the work of the Nebraska Legislative Council as director of reference and research.

Dr. Earl G. Latham, instructor and tutor in the department of government at Harvard University, has been appointed assistant professor of political science at the University of Minnesota. He will teach courses in constitutional law and administrative law.

Professor Joseph R. Starr and Mr. Charles H. McLaughlin, on leave from the University of Minnesota during 1939–40, will return to their positions in the political science department in September.

Dr. Samuel Guy Inman, professor of Latin American relations at the University of Pennsylvania, conducted a study group through Latin America during the summer.

Dr. Hubert R. Gallagher, of the Council of State Governments, has been named by President Roosevelt as an American member of the recently created Board of Inquiry for the Great Lakes Fisheries, and at the organization meeting held in May was selected as chairman.

Professor Edward W. Carter, of the University of Pennsylvania, has been appointed a special adviser in the U. S. Department of Agriculture, and is employed as consultant on governmental aspects of the study of employment and reforestation possibilities in Pennsylvania's anthracite coal region.

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Professor Winchester H. Heicher has resigned his position at New York University to accept an assistant professorship at the University of Vermont.

At New York University, Dr. Harvey Pinney has been advanced to an assistant professorship.

Professor Paul M. A. Linebarger, of Duke University, visited China during the summer but will return to his regular work in September.

Professor John W. Manning, of the University of Kentucky, has been granted a year's leave from that institution and will become a staff member of the National Institute of Public Affairs in Washington, D. C. During his absence his work will be taken over by Mr. John E. Reeves, formerly of Columbia University and recently director of research for the Kentucky Legislative Council.

Dr. Harold W. Stoke, professor of political science and dean of the graduate school at the University of Nebraska, has been appointed professor of political science and assistant dean of the graduate school at the University of Wisconsin.

While on leave from the University of California during the second semester of the coming academic year, Professor Austin F. Macdonald will make a detailed investigation of government, politics, and public administration in Argentina.

At Vanderbilt University, the department of history and political science has been divided and Professor Denna F. Fleming has been made head of the new department of political science.

At the John B. Stetson University, Dr. G. Leighton La Fuze, who has served two years as professor of history and political science, has been made head of a newly established department of social sciences.

In the recent summer session of the University of Nebraska, Professor Taylor Cole, of the University of Washington, gave courses on comparative government, and in the second term of the summer quarter at the University of Minnesota, courses in constitutional law and the elements of political science.

At Tulane University, the department of history and political science has been divided and Professor William V. Holloway has been made head of the new department of political science.

The Joint State Government Commission, Pennsylvania's legislative council, has added to its advisory committee Professors Alfred G. Buehler and Edward W. Carter, of the University of Pennsylvania.

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At Rutgers University, Dr. A. G. Ronhovde has been advanced to an assistant professorship. Dr. Ronhovde spent the past year in research in Oslo, Norway.

Mr. M. Henry Wells has been appointed assistant in government at Yale University.

Dr. Carl Kreider has been appointed instructor in political science at Goshen College, Goshen, Indiana.

Professor William P. Maddox, of the University of Pennsylvania, has been awarded the Penfield Travelling Fellowship for the academic year 1940–41.

At Northwestern University, Professor A. R. Hatton has retired from active service and Dr. John Thurston has resigned to accept a post with the U. S. Department of Agriculture. In pursuance of these changes, Professor Joseph P. Harris, of the University of California, has been appointed professor of political science, and Professor Lane W. Lancaster, of the University of Nebraska, visiting professor for the year 1940–41.

Professors George S. C. Benson, of the University of Michigan, George A. Graham, of Princeton University, and Pendleton Herring, of Harvard University, have been appointed members of the Committee on Public Administration of the Social Science Research Council. Mr. Patterson H. French has resigned as assistant professor at Yale University to become a member of the staff of the Committee as of June 1. The Committee also made arrangements for Professor Joseph P. Harris to spend the summer in Washington facilitating liaison between the administrative agencies of the government and the research personnel of the country in emergency problems of administration and organization.

The Social Science Research Council has awarded a post-doctoral fellowship in political science for 1940–41 to Mr. Richard P. Stebbins, of Harvard University; also pre-doctoral fellowships to Mr. Howard R. Penniman, of the University of Minnesota, and Miss Ellen R. Sorge, of the University of Wisconsin. Grant-in-aid appointees include Professor Harold M. Vinacke, of the University of Cincinnati, and Dr. John W. Nasland, of Stanford University.

The American Judicature Society announces that the name of any interested person will be placed on the mailing list to receive the Society's *Journal* without charge, on request addressed to the Society at Ann Arbor, Mich. The Society's work has been carried on for twenty years on the basis of free circulation.

The Third Annual Institute of Public Affairs, held at the University of

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New Hampshire on July 9, discussed "Political Action Groups in New Hampshire." As a special feature, Professor Carl J. Friedrich, of Harvard University, spoke on "Recent Trends in Propaganda."

At a Southern Institute on Local Government to be held at the University of Tennessee on November 22–23, the principal speakers will be Dr. Carl E. Chatters, of the Municipal Officers' Association, Mr. Murray Seasongood, of Cincinnati; Drs. Thomas H. Reed and E. W. Morehouse, of New York City; and Mr. Hugh R. Pomeroy, of the Virginia State Planning Board.

Students of mediaeval English legal and social history, now cut off from English archives, may be interested to know that Professor Nellie Neilson has deposited in the Mount Holyoke College Library photostats of important cases from certain rolls of the Courts of Common Pleas and King's Bench, *temp.* Edward IV, and a controlment roll. In addition to this material, there are full analyses or calendars of all the cases entered on several of these rolls, and certain other pertinent material. The college would welcome visits from students interested in this kind of manuscript material. Inquiries may be addressed to Professor Nellie Neilson or to the Library.

Moved by a desire to establish at the University of Illinois a suitable memorial to the late Professor James W. Garner, a number of his former students and colleagues have undertaken the task of raising a sum of money which is to be turned over to the University, and which is to bear the title "James Wilford Garner Memorial Student Loan Fund." The principal and income of the fund will be used to make loans to worthy students who are upper classmen majoring in political science at the University. The committee of sponsors, of which Dr. David Kinley, president emeritus of the University, Wallace R. Deuel, Berlin correspondent of the *Chicago Daily News*, and Irving Dilliard, editorial writer of the *Saint Louis Post-Dispatch*, are honorary chairman, chairman, and acting chairman respectively, has addressed letters to three thousand former students of Professor Garner inviting them to contribute to the fund. Contributions from other persons desiring to participate in this effort to do honor to Professor Garner's memory would, of course, be welcomed and appreciated. Checks should be made payable to the fund and addressed to Valentine Jobst III, treasurer, 301 Lincoln Hall, Urbana, Illinois.

The American Society for Public Administration. Since the organization of the Society on December 27, 1939, steady progress has been made toward the achievement of its immediate objectives. Following the first meeting of the Council, on February 17, provisional headquarters were established in Chicago, where the Public Administration Clearing House

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offered to provide during 1940 the services of certain regular members of its staff and other office facilities.

Local Chapters. Local chapters of the Society are in the early stages of development in more than a score of places. It is believed that these will prove particularly valuable in fostering better understanding, closer cooperation, and a fruitful exchange of experience among public administrative officials drawn from various functions and from the three levels of government—federal, state, and local. Patterns and attitudes of cooperation which minimize these divisions are particularly important in this time of crisis and peril to the democratic way of life.

Prior to July 1, chapter organization meetings were held in Los Angeles, Sacramento, and San Francisco, California; Estes Park, Colorado; Washington, D.C.; Chicago, Illinois; Boston and Cambridge, Massachusetts; Minneapolis and St. Paul, Minnesota; New York City; Cleveland, Ohio; and Richmond, Virginia. President Mosher has addressed more than half of these gatherings, and some member of the Council has been present at each of them. The attendance at the meetings has been very encouraging. More than two hundred participated in the Washington, D.C. meeting, and many were turned away because of lack of space. Attendance at the other meetings has ranged from fifty to more than one hundred. In each community where chapter organization meetings have been held, federal and state government administrative officials headquartered in the area, as well as local government administrators, have participated and expressed interest in the Society's program. During July, meetings were held in Albuquerque, New Mexico; Portland, Oregon; and Seattle, Washington.

Journal. The Society's quarterly journal will be called *The Public Administration Review.* The first issue, barring unforeseen events, will be published during the fall. The journal will be edited with the needs and interests of public officials and those who have some measure of administrative responsibility in federal, state, and local governments uppermost in the minds of the editors. An effort will be made to discover and publish articles which will constitute significant additions to the literature of public administration. The *Review* will contain, in addition to articles of considerable substance, book reviews, news notes, and other brief items. Dr. Leonard D. White is serving as editor-in-chief of the journal. The names of the other members of the Editorial Board were given in the June issue of the *American Political Science Review.*

Annual Meeting. The program of the Society's second annual conference, scheduled to be held in Chicago, December 28 to 30, 1940, is being developed by a committee composed of Earl H. DeLong, of Northwestern University, chairman; George C. S. Benson, of the University of Michigan; Gordon Clapp, of the Tennessee Valley Authority; Herbert Emmer-

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ich, of the Public Administration Clearing House; and Harvey Walker, of Ohio State University. Several sessions will be arranged and sponsored jointly by the Society and the American Political Science Association, which will be holding its annual meeting at the same time and place.

Committee on Research. President Mosher has appointed a committee on research which will report from time to time on research in progress and problems which need to be studied. Professor William Anderson, of the University of Minnesota, is chairman, and the other members are: Louis Drexler, New York State Department of Civil Service; Walter Gellhorn, Attorney-General's Committee on Administrative Procedure; Bernard Gladieux, U. S. Bureau of the Budget; Alonzo Grace, Connecticut State Department of Education; Joseph P. Harris, Northwestern University; Glen Leet, Rhode Island Department of Social Welfare; Albert Lepawsky, Federation of Tax Administrators; Herman C. Loeffler, Boston Municipal Research Bureau; Henry J. McFarland, California State Personnel Board; Ralph Olmstead, Division of Organization and Management, U. S. Department of Agriculture; and Harold Seidman, New York City Department of Investigation. The secretary of this committee will be Charles S. Ascher, secretary of the Committee on Public Administration of the Social Science Research Council.—ROBERT M. PAIGE, *Secretary-Treasurer.*

The American Political Science Association and the Problem of Regionalism: A Summary of a Committee Report.* *A. Regional Associations and Groups of Political Scientists.* Under this head are considered all regional, metropolitan, and state associations and reasonably well defined groups of political scientists which have come to the attention of the Committee. Of these, there are eight, namely, the Connecticut Valley Political Science Association, the New York Metropolitan Group, the Pennsylvania Political Science Association, the Washington Group, the Midwest Conference of Political Scientists, the Southern Political Science Association, the Southwestern Social Science Association, and the West Coast Group. A brief statement concerning each of these associations and groups follows.

* In the late spring of 1939, President Charles Grove Haines of the American Political Science Association appointed a committee to study and to make recommendations concerning the relations between that Association and the various regional, metropolitan, and state associations or groups of political scientists in the United States. The Committee on Relations with Regional Societies included Professors Clarence A. Berdahl, William S. Carpenter, Francis W. Coker, Edwin A. Cottrell, W. Brooke Graves, James K. Pollock, Emmette S. Redford, and (as chairman) Roscoe C. Martin. The report of the Committee, which was presented at the December, 1939, meeting of the Executive Council, has been revised and condensed by the chairman for publication in the REVIEW.

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The Connecticut Valley Political Science Association. This Association began in a meeting held at Amherst College in the spring of 1931, with political scientists attending from Amherst, Massachusetts State, Mount Holyoke, Smith, Wellesley, and Williams Colleges. Meetings have been held annually since, with as many as 20 institutions represented at various times. There are no regular institutional or individual members, nor are there officers, committees, dues, or constitution. In short, the Association is a quite informal group, and there appear to be no indications of any desire to change its character.

The New York Metropolitan Group. In the spring of 1939, a group of political scientists in the New York metropolitan area met at Columbia University to discuss plans for organizing a regional association. Interest in the venture seemed sufficient to warrant the group's proceeding, and arrangements for future meetings were placed in the hands of a president (or chairman) and an executive committee representing each institution in the area. Subsequently, the executive committee met and voted to keep the organization informal and to recommend that the association meet from two to four times a year. There is every reason to suppose that the young New York association will take hold and grow, though to date it is hardly past the formative stage.

Pennsylvania Political Science Association. The Pennsylvania Association, formally organized in the spring of 1939, is the outgrowth of a series of meetings and conferences extending back for a decade. Its officers include a president, vice-president, and treasurer, and an executive council of six members. Program and research committees are now in process of formation. The Association has a written, though brief, constitution. Its membership now numbers about 35, chiefly teachers of political science in the various colleges and universities of Pennsylvania.

The Washington Group. For two years, the teachers of political science in the Washington area, together with a few representatives of government agencies, have met for luncheon once a month. The group numbers perhaps 40 members; average attendance at the luncheon meetings has been around 20; and organization and procedure are quite informal. It may be characterized rather as a more or less spontaneous luncheon group than as a local or regional political science association.

Midwest Conference of Political Scientists. Following meetings of interested persons at the Philadelphia and Columbus sessions of the American Political Science Association, the first conference of Midwestern political scientists was held in May, 1939. In attendance were 110 political scientists from eight states. At this initial meeting it was decided to hold a conference annually, and to keep the organization informal. The 1939 meeting was quite successful, and those who participated in it believe that there is a definite place for the Midwest Conference.

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Southern Political Science Association. In 1929, a group meeting in Atlanta organized the Southern Political Science Association, which has met annually since. The Association has a written constitution and an organization consisting of a president, vice-president, and secretary, and an executive council. Its individual members number about 100, most of them residing in the Southeast; and its annual meetings are attended by from 60 to 75 persons. Since 1938 the Association has published a quarterly called *The Journal of Politics.*

Southwestern Social Science Association. This organization goes back to 1919, when the Southwestern Political Science Association was formed. The name of the original organization has been twice modified to produce that currently used. As indicated, the Association includes all of the social sciences. It meets in annual session, and publishes a quarterly called *The Southwestern Social Science Quarterly.* The political science section now has some 50 members; and political science attendance at the annual convention ranges from 60 to 80.

The West Coast Group. As early as 1916 an effort was made to organize a West Coast political science association. The movement was abandoned when no widespread interest appeared. There is now in existence a Pacific Coast Social Science Research Council, which has 60 members scattered among the various social science fields on a proportional basis. The Council is neither exclusively political science in character nor adequately representative of the political scientists in the region. In recent months there has been some discussion of the feasibility of establishing a political science association. Inquiry reveals no widespread demand for such an organization, however, and it is therefore not likely that one will come into being in the near future.

B. Regional Organizations in Other Fields. The problem of national-regional association relations is, of course, neither new nor peculiar to political science. On the contrary, some learned societies have been beset by it for many years. Now and again the subject comes before the annual conference of the secretaries of societies holding membership in the American Council of Learned Societies. At the thirteenth annual conference of the secretaries of the constituent societies (January 28, 1937), the problem was discussed at some length. The discussion is of such pertinence as to warrant reproduction in full here. It follows:[1]

"Mr Phelps of the American Sociological Society was called upon to open the discussion. He said that a difficulty had arisen when his society sought research funds, and found the Foundations hesitant or unwilling to grant them because they felt the society was not sufficiently coördinated; yet the Sociological Society is organized around a journal costing

[1] American Council of Learned Societies, Bulletin No. 26 (June, 1937), 131–2.

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several thousand dollars per year. It must be admitted, however, that many small competing journals in the same discipline create local and regional complications. Thus a situation has arisen, involving the relation of the national society to local and regional societies, with which it is difficult to cope. Mr. Long (Modern Language Association) replied by citing the experience of the Modern Language Association, which has 43 specialized groups originating and administering projects. There are also many regional associations which the Association cultivates by meeting with them occasionally, since there is much overlapping of memberships. Mr. Phelps said that, in the case of the Sociological Society, many of the regional groups were in competition with the national society in the matter of publication; on account of the great quantity of material seeking publication, the growth in number of journals has been greatly stimulated. Mr. Long suggested that this problem might be taken care of by providing for book or monograph series. Mr. Read (American Historical Association) remarked that with most societies there is a broad basis of membership, but some are devoted to high scholarly pursuits; this creates the difficulty of smaller groups splitting off because they do not get what they want in the societies' journals. Mr. Setzler (American Anthropological Association) spoke of recent developments in the field of American Archaeology which have led to the founding of a new society to meet the interest in Mississippi Valley archaeology. The new society has its own journal, and its membership represents about a 75 per cent overlap with the American Anthropological Association; but cordial relations exist between the new society and the national organization. Mr. Read added that the American Historical Association encourages local organizations in its field, since local interests naturally stimulate such organization; thus far there has been no real conflict with the national society, but efforts to establish associate memberships for the national society have not met with favorable response on the part of local organizations; the national society has tended to abandon the policy of subsidizing regional organizations, since this seems to create more difficulties than it meets. Further discussion revealed that the problem of relations of national societies with regional and specialized societies had its peculiar difficulties, differing materially in the case of each society. No recommendation could therefore be formulated which would express a unanimous opinion of the secretaries present."

At the annual meeting of the American Council of Learned Societies of January 28 and 29, 1938, Mr. G. W. Cottrell, Jr., executive secretary of the Mediaeval Academy of America, reported on a study of American learned societies then in progress under his direction.[2] His report dealt

[2] *Ibid.*, Bulletin No. 27 (November, 1938), 67–68.

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with procedure rather than substance, but the project he described seemed to hold much promise for this Committee.

Correspondence with Mr. Cottrell and with Mr. Mortimer Graves, administrative secretary of the American Council of Learned Societies, produced some information and a number of leads. Mr. Cottrell wrote, in part: "The matter of the relation of regional and local societies to the national body is a very interesting and important one, and I hope to be able to deal with it at some length in the survey of learned societies which I have under way. I have not, however, at the present time much material on the subject available in any sort of coherent form." He suggested, as did Mr. Graves, that letters of inquiry be addressed directly to the secretaries of half a dozen of the societies whose experience with regional associations might prove helpful to the Committee.

These suggestions were followed, and the inquiries brought replies from the secretaries or executive officers of the American Oriental Society, the American Philological Association, the American Philosophical Society, the Archaeological Institute of America, and the Modern Language Association of America. These replies provide a basis for almost any finding; for other learned societies run the gamut from those which recognize no regional associations to those which are nothing more than confederations of such associations. Small wonder that the secretaries of the organizations constituent to the American Council of Learned Societies found it impossible to reach unanimous agreement on the problem of national-regional association relations! The only general conclusion which seems warranted is that in most fields the national organization recognizes the existence of regional societies and makes a conscious effort to work with them.

This segment of the inquiry is worthy of much more attention than it has received. The Committee respectfully suggests to Mr. Cottrell that he go into this problem at some length, with the thought that his report on national-regional association relations will be not only significant *per se* but also highly useful to the constituent societies.

C. Findings and Recommendations: (a) *Findings:* 1. There are at the present time eight regional associations and groups of political scientists in the United States, of which seven are active. Five are regional in character. These are the Connecticut Valley Association, the Midwest Conference, the Southern Association, the Southwestern Association, and the West Coast Group. Two, the New York Group and the Washington Group, are metropolitan in scope; and one, the Pennsylvania Association, is limited to a single state.

2. All save one are independent of other like associations and groups. Of these seven, two—the Pennsylvania Association and the Southern Association—are organized formally; four—the Connecticut Valley Association, the New York Group, the Washington Group, and the Mid-

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west Conference—have very informal organizations; and one—the West Coast Group—at present has no organization. The eighth, the Southwestern Social Science Association, contains a political science section along with several other social science divisions. There is, in short, a great deal of variety among the several associations and groups in organizational set-up.

3. Such associations seem to have sprung uniformly from the need for media for the consideration of regional problems, and from desire on the part of the political scientists of given areas to become better acquainted among themselves. The regional associations and groups appear to serve their purposes satisfactorily.

4. No conflict has been discovered between the American Political Science Association and any of the regional associations or groups. On the contrary, all signs point to the performance by the local organizations of functions which are largely outside the scope of the American Political Science Association; while on its part the national association serves needs quite beyond the purview of the regional societies.

5. The regional associations are unanimous in expressing their desire to coöperate with the American Political Science Association in all matters of mutual interest and concern.

6. Other learned societies have found it necessary to take cognizance of the problem of national-regional association relations. The study of their experience deserves more time and thought than this Committee has been able to give it.

(b) *Recommendations.* 1. The Committee feels that the course of wisdom on the part of the American Political Science Association is to cooperate in fullest measure with the regional associations and groups, and to seek their support of its own program.

2. The Committee recommends that, as an immediate minimum earnest of its interest, the American Political Science Association send a representative to each annual regional meeting, or where an association or group meets more than once a year, to one meeting annually. Such representative should be a prominent member of the Association who does not reside in the region in question. His expenses should be borne by the national association if it is at all possible to find money for the purpose.

3. While the problem of relations with regional associations and groups is not yet a serious one for the American Political Science Association, it certainly is a very important one. Further, it is not unlikely that functional associations of political scientists on a national scale will grow up within the next few years. In view of its own findings and in view of these probable developments, the Committee recommends the appointment of a continuing committee to study further the problem of national-regional relations and to consider the incipient problem occasioned by the prospective rise of functional associations.

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A TABULAR ANALYSIS

Implicit in the relations between the American Political Science Association and the regional associations and groups is the broader problem of regionalism as it affects the national association. The tables which follow comprise an analysis of this problem. Prepared in connection with the work of the Committee on Relations with Regional Societies, they are presented without comment or recommendation.

The regions are those delimited by Howard W. Odum in his study, *American Regionalism*. They are:

Northeast	*Middle States*	*Southeast*	*Northwest*
Maine	Ohio	Virginia	North Dakota
New Hampshire	Indiana	North Carolina	South Dakota
Vermont	Illinois	South Carolina	Nebraska
Massachusetts	Michigan	Georgia	Kansas
Rhode Island	Wisconsin	Florida	Montana
Connecticut	Minnesota	Kentucky	Idaho
New York	Iowa	Tennessee	Wyoming
New Jersey	Missouri	Alabama	Colorado
Delaware		Mississippi	Utah
Pennsylvania	*Southwest*	Arkansas	
Maryland	Oklahoma	Louisiana	*Far West*
West Virginia	Texas		Nevada
	New Mexico		Washington
	Arizona		Oregon
			California

In all calculations, the District of Columbia is included with the Northeast. The membership norm employed was established by taking the average figures of the membership lists of July, 1934, July, 1936, February, 1938, and July, 1939, which were the four lists conveniently available.

The principal tables are 1, 2, 3, 4, 5, and 6. Tables 2A, 3A, etc., develop in more detail the data of their respective principal tables.

TABLE 1

*Regional Distribution of Individual Members of the American Political Science Association**

Region	July, 1934		July, 1936		February, 1938		July, 1939		Four-Year Average	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Northeast	499	48.35	503	46.36	545	46.23	626	47.04	543	46.92
Middle States	311	30.00	320	29.49	330	28.00	373	28.02	333	28.79
Southeast	69	6.67	88	8.11	102	8.65	120	9.01	95	8.21
Southwest	28	2.70	30	2.76	40	3.39	38	2.86	34	2.93
Northwest	45	4.35	49	4.52	49	4.15	47	3.53	48	4.15
Far West	82	7.93	95	8.76	113	9.58	127	9.54	104	9.00
Total	1034	100.00	1085	100.00	1179	100.00	1331	100.00	1157	100.00

* The figures used here do not take into account (1) foreign members, (2) institutional members, or (3) librarians, who are presumed to be more interested in receiving the REVIEW than in holding membership in the Association (such persons form a very small percentage of the total membership).

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TABLE 2

Regional Percentage Distribution of Officers and of Individual Members of the American Political Science Association

Region	Officers, Ten-Year Summary, 1930–1939			Individual Members, Four-Year Average, 1934–1939
	President	Vice-Presidents	Members of the Executive Council	
Northeast	50.00	46.67	34.67	46.92
Middle States	40.00	36.67	28.00	28.79
Southeast			13.33	8.21
Southwest			6.67	2.93
Northwest			5.33	4.15
Far West	10.00	16.66	12.00	9.00
Total	100.00	100.00	100.00	100.00

TABLE 2A

Regions of Residence by Years of the Presidents of the American Political Science Association, 1930–1939

Region	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	Total	Percentage Distribution
Northeast		1	1			1	1	1			5	50.00
Middle States	1			1	1				1		4	40.00
Southeast												
Southwest												
Northwest												
Far West										1	1	10.00
Total	1	1	1	1	1	1	1	1	1	1	10	100.00

TABLE 2B

Regional Distribution by Years of the Vice-Presidents of the American Political Science Association, 1930–1939

Region	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	Total	Percentage Distribution
Northeast	1		1	2	2	2	2	1	1	2	14	46.67
Middle States	2	3	1		1		1	1	1	1	11	36.67
Southeast												
Southwest												
Northwest												
Far West			1	1		1		1	1		5	16.66
Total	3	3	3	3	3	3	3	3	3	3	30	100.00

TABLE 2C

Regional Distribution by Years of the Members of the Executive Council of the American Political Science Association, 1930–1939

Region	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	Total*	Percentage Distribution
Northeast	6	5	5	4	4	5	6	7	6	4	52	34.67
Middle States	5	5	5	5	4	4	3	3	3	5	42	28.00
Southeast	1	1	1	1	2	3	4	3	2	2	20	13.33
Southwest			1	1	2	1	1	1	1	2	10	6.67
Northwest	1	1	1	1	1	1			1	1	8	5.33
Far West	2	3	2	3	2	1	1	1	2	1	18	12.00
Total	15	15	15	15	15	15	15	15	15	15	150	100.00

* This is the total number of places on the Executive Council from 1930 to 1939. Since the Council is a continuing body, it contained only 60 individual members during that period. The percentage distribution figures for the 60 separate members approximate those for the 150 places listed in the table.

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TABLE 3

Regional Percentage Distribution of the Board of Editors of the AMERICAN POLITICAL SCIENCE REVIEW, *of Contributors to the* REVIEW, *and of Individual Members of the American Political Science Association*

Region	Members of the Board of Editors, 1930–1939	Contributors to the REVIEW, 1930–1939			Individual Members, Four-Year Average, 1934–1939
		Authors of Leading Articles	Authors of Sectional Articles	Authors of Book Reviews	
Northeast	45.00	46.94	43.71	51.64	46.92
Middle States	41.00	32.65	35.14	34.07	28.79
Southeast	6.00	3.40	4.86	2.75	8.21
Southwest		.68	2.86	.22	2.93
Northwest		1.36	4.29	1.76	4.15
Far West	8.00	14.97	9.14	9.56	9.00
Total	100.00	100.00	100.00	100.00	100.00

TABLE 3A

Regional Distribution by Years of the Members of the Board of Editors of the REVIEW, *1930–1939*

Region	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	Total*	Percentage Distribution
Northeast	5	5	5	4	4	5	4	4	4	5	45	45.00
Middle States	4	3	3	4	5	4	6	5	4	3	41	41.00
Southeast		1	1	1				1	1	1	6	6.00
Southwest												
Northwest												
Far West	1	1	1	1	1	1			1	1	8	8.00
Total	10	10	10	10	10	10	10	10	10	10	100	100.00

* This is the total number of places on the Board of Editors from 1930 to 1939. Since the Board is a continuing body, and since frequently members are reappointed, it contained only 30 individual members during that period. The percentage distribution figures for the 30 separate members approximate those for the 100 places listed in the table.

TABLE 3B

Regional Distribution by Years of the Authors of Leading Articles† in the REVIEW, *1930–1939*

Region	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939*	Total	Percentage Distribution
Northeast	5	5	9	6	12	4	5	9	8	6	69	46.94
Middle States	3	6	5	6	4	8	5	6	4	1	48	32.65
Southeast					1	1	2		1		5	3.40
Southwest	1										1	.68
Northwest		1							1		2	1.36
Far West	2	2	1	3	2	1	2	3	2	4	22	14.97
Total	11	14	15	15	19	14	14	18	16	11	147	100.00

† Excepting authors resident in foreign countries.
* First four issues only.

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TABLE 3C

Regional Distribution by Years of the Authors of Secondary (Sectional) Articles† in the REVIEW, *1930–1939*

Region	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939*	Total	Percentage Distribution
Northeast	13	14	13	17	18	21	17	18	13	9	153	43.71
Middle States	14	15	17	10	12	12	18	10	8	7	123	35.14
Southeast		3		2	4	1		2	5		17	4.86
Southwest	3	2	1	1	1			2			10	2.86
Northwest	4	2	1	2	2	2	1			1	15	4.29
Far West	2	4	6	1	5	4	3	3	2	2	32	9.14
Total	36	40	38	33	42	40	39	35	28	19	350	100.00

† Excepting authors resident in foreign countries.
* First four issues only.

TABLE 3D

Regional Distribution by Years of the Authors of Book Reviews† in the REVIEW, *1930–1939*

Region	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939*	Total	Percentage Distribution
Northeast	41	44	49	43	44	52	55	54	50	38	470	51.64
Middle States	21	24	15	46	35	38	32	30	47	22	310	34.07
Southeast	3	1	1	1	4	2	2	5	3	3	25	2.75
Southwest		1			1						2	.22
Northwest	2		2	2		2		4	1	3	16	1.76
Far West	9	5	6	4	13	8	10	11	10	11	87	9.56
Total	76	75	73	96	97	102	99	104	111	77	910	100.00

† Excepting authors resident in foreign countries.
* First four issues only.

TABLE 4

Regional Percentage Distribution of Participants in the Program of the Annual Meeting and of Individual Members of the American Political Science Association

Region	Participants in Programs, 1929–1938*			Individual Members, Four-Year Average, 1934–1939
	Presiding Officers, Directors, and Chairmen	Readers of Papers	Discussion Leaders	
Northeast	35.56	47.94	42.11	46.92
Middle States	48.33	34.58	35.25	28.79
Southeast	7.77	8.90	11.97	8.21
Southwest	.56	2.05	2.56	2.93
Northwest	1.67	.34	1.44	4.15
Far West	6.11	6.19	6.67	9.00
Total	100.00	100.00	100.00	100.00

* Here are omitted some persons from the newer Federal agencies (as the AAA) where it was not possible to tell their place of residence. All persons from the permanent Washington offices are included.

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TABLE 4A

Regional Distribution by Years of the Presiding Officers, Directors, and Chairmen on the Program of the Annual Meeting of the American Political Science Association, 1929–1938*

Region	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	Total	Percentage Distribution
Northeast	4	7	3	2	8	6	10	10	9	5	64	35.56
Middle States	14	11	2	5	7	19	4	8	8	9	87	48.33
Southeast	1			1	1	1	7		2	1	14	7.77
Southwest							1				1	.56
Northwest	1			1						1	3	1.67
Far West		4		2			2	2		1	11	6.11
Total	20	22	5	11	16	26	24	20	19	17	180	100.00

* Excepting two or three whose place of residence could not be determined.

TABLE 4B

Regional Distribution by Years of the Readers of Papers on the Program of the Annual Meeting of the American Political Science Association, 1929–1938*

Region	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	Total	Percentage Distribution
Northeast	4	16	23	5	37		3	6	29	17	140	47.94
Middle States	5	21	17	6	27	5		1	9	10	101	34.58
Southeast	1	2	2	2	9	1	3	1	3	2	26	8.90
Southwest	2	1	1				1			1	6	2.05
Northwest										1	1	.34
Far West	1	4	2		5			1	1	4	18	6.19
Total	13	44	45	13	78	6	7	9	42	35	292	100.00

* Excepting two or three whose place of residence could not be determined.

TABLE 4C

Regional Distribution by Years of the Discussion Leaders on the Program of the Annual Meeting of the American Political Science Association, 1929–1938*

Region	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	Total	Percentage Distribution
Northeast	22	18	12	20	16	31	52	37	21	35	264	42.11
Middle States	15	19	13	13	6	41	32	35	20	27	221	35.25
Southeast	6	1	2	4	11	5	19	8	6	13	75	11.97
Southwest	6				2	1	3	3	1		16	2.56
Northwest			2	1	2	2		2			9	1.44
Far West	3	3		3	1	5	9	6	5	7	42	6.67
Total	52	41	29	41	38	85	115	91	53	82	627	100.00

* Excepting not more than half a dozen whose place of residence could not be determined.

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TABLE 5

Regional Percentage Distribution of Attendants at the Annual Meeting and of Individual Members of the American Political Science Association

Region	Attendants, Annual Meeting of December, 1937 (Philadelphia)	Individual Members, February, 1938	Attendants, Annual Meeting of December, 1938 (Columbus)	Individual Members, July, 1939
Northeast	64.94	46.23	32.17	47.04
Middle States	19.35	28.00	49.13	28.02
Southeast	8.81	8.65	10.21	9.01
Southwest	1.72	3.39	1.74	2.86
Northwest	2.11	4.15	3.48	3.53
Far West	3.07	9.58	3.27	9.54
Total	100.00	100.00	100.00	100.00

TABLE 6

Percentage by Regions of the Individual Members of the American Political Science Association in Attendance at the Annual Meeting

Region	1937 (Philadelphia) Meeting			1938 (Columbus) Meeting		
	Number of Members	Number Attending Meeting	Percentage Attending Meeting	Number of Members	Number Attending Meeting	Percentage Attending Meeting
Northeast	545	339	62.20	626	167	26.67
Middle States	330	101	30.60	373	255	68.36
Southeast	102	46	45.10	120	53	44.16
Southwest	40	9	22.50	38	9	23.58
Northwest	49	11	22.45	47	18	38.30
Far West	113	16	14.16	127	17	13.38
Total	1179	522	44.28	1331	519	38.99

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY LLEWELLYN PFANKUCHEN[2]
University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

William M. Barr; Litt. B., Rutgers, 1928; A.M., Columbia, 1936. The Philosophy of Woodrow Wilson. *Columbia.*

Norman W. Beck; A.B., Chicago, 1923. Machiavelli as a Political Inventor. *Chicago.*

Dorothy Borg; A.M., Columbia, 1931. American Public Opinion in China. *Columbia.*

Arthur F. Boulter; B.B.A., College of the City of New York, 1936; A.M., Syracuse, 1940. Rural Opinion Survey for the United States Forest Service in the Vernon Unit of the Kisatchie National Forest, Louisiana, in Coöperation with the Division of Program Surveys, Bureau of Agricultural Economics, United States Department of Agriculture. *Syracuse.*

Julia Helen Chen; A.B., Hwa Nan College, China, 1928; A.M., American, 1937. The History and the Divisions of the Chinese Press in the United States. *American.*

Shih-Tsai Chen; LL.B., National Central University, 1935; A.M., Harvard, 1939. The Theory and Practice of Equality of States. *Harvard.*

Mary Louise Degan; A.B., Goucher, 1935. The Pacifist Ideas and Activities of the American Branch of the Women's International League of Peace and Freedom. *Johns Hopkins.*

Karl Wolfgang Deutsch; Dr. of Law and Political Science, Prague, 1938. The Economic Factors in Nationalism: A Technique of Inquiry Applied to Some Successors of Central Europe. *Harvard.*

[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 772 (1937); XXXII, 796 (1938); XXXIII, 732 (1939).

Items which appeared in the August, 1939, list are in general classified under the same headings in the present list, and new items have been assimilated to the 1939 classification as far as possible. In cases where classification of an item has been suggested by the institution concerned, the suggestion has been followed. It is believed that each item is listed under one classification only.

The lists printed in the REVIEW are based on information from departments giving graduate instruction in political science. Often dissertations are in progress in departments of economics, history, sociology, etc., which overlap or supplement dissertations in preparation in political science. Attention is called especially to the following lists: "Doctoral Dissertations in Political Economy in Progress in American Colleges and Universities," in the *American Economic Review;* "List of Doctoral Dissertations in History Now in Progress at American Universities," Division of Historical Research, Carnegie Institution of Washington; and "Higher Degrees in Sociology," in the *American Journal of Sociology.* Usually one list is published each year. These are in addition to the "List of American Doctoral Dissertations Printed in 1936–1937," the most recent of an annual series published by the Library of Congress.

[2] With the assistance of Miss Emily Blenis, hereby gratefully acknowledged.

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Edward Newell Doan; A.B., Ohio Wesleyan, 1926; A.M., Wisconsin, 1928. Psychometric Measurements as a Means of Determining the Pattern of Political Processes. *Ohio State.*

Guy Howard Dodge; A.B., Western Reserve, 1933; A.M., Harvard, 1937. Political Theory of the Huguenots of the Dispersion, with Special Reference to Pierre Jurieu. *Harvard.*

Emmet E. Dorsey; A.B., Oberlin, 1927; A.M., Columbia, 1932. A Critique of Negro Political Leadership; A Series of Social Biographies. *Columbia.*

Harold L. Elstien; A.B., Syracuse, 1934. Democratic Tolerance of Anti-Democratic Organization. *Chicago.*

Heinz H. F. Eulau; A.B., California, 1936; A.M., *ibid.*, 1938. Influence of American Federalism on German Federal Thought in the Nineteenth Century. *California.*

J. Eldon Fields; A.B., Kansas, 1934. Neo-Marxian Theories of War and Peace. *Stanford.*

Hilden Russell Gibson; A.B., Kansas, 1933. Socio-psychological Aspects of the Political Theory of Karl Marx. *Stanford.*

Martin Joseph Hillenbrand; A.B., University of Dayton, 1937; A.M., Columbia, 1938. An Analysis of the Concept of Obligation. *Columbia.*

Norman H. Hinton; A.B., California (L.A.), 1933; A.M., Columbia, 1934. American Political Scientists: Francis Lieber. *Columbia.*

Byron Marshall Holmes; Political Nativism. *Southern California.*

Robert D. Howard; A.B., Harvard, 1924; A.M., *ibid.*, 1928. Theories of Conservatism and of Constitutional Democracy in State Constitutional Conventions. *Harvard.*

Paul Kelso; A.B., in Ed., Ball State Teachers College, 1933; A.M., Wisconsin, 1938. Factors Influencing Attitudes Toward Municipal Government in Selected Ohio Cities. *Ohio State.*

Edgar Kemler; A.B., Johns Hopkins, 1936. The Deflation of American Ideals; A Study of the Response of Traditional Progressivism to the Conditions of the Fascist Era. *Harvard.*

Eugene E. Koch; A.B., Pittsburgh, 1932; A.M., *ibid.*, 1935. Political Philosophy of John Selden. *Pittsburgh.*

Luther J. Lee, Jr.; A.B., Pomona, 1933. Political Significance of Reconstruction for American Nationalism after the Civil War; A Study in American Political Thought. *California.*

Clifton Sigsbee Lowry; A.B., Kentucky, 1924; A.M., Kentucky, 1925; A.M., Harvard, 1935. The Political Thought of Kentucky, with Special Reference to the Influence of John Locke. *Kentucky.*

Milton R. Merrill; B.S., Utah State College, 1925; A.M., Columbia, 1932. The Public Career of Reed Smoot. *Columbia.*

Louis T. Olom; A.B., Chicago, 1937. The Study of Political Leadership. *Chicago.*

Beth Alene Roberts. A Study of American Public Opinion Regarding the Foreign Policy of Franklin D. Roosevelt. *Southern California.*

George F. Rowe; A.B., Wisconsin, 1932; A.M., Chicago, 1937. Coöperation among Farmer-Labor-Progressive Groups in the United States. *Chicago.*

James H. Sheldon; A.B., Marietta, 1927; A.M., Harvard, 1928. Factors Involved in Determining Public Attitudes toward International Policies. *Harvard.*

Tarini Prasad Sinha; A.M., Michigan, 1934. The Political Techniques of Gandhi. *Chicago.*

Bruce Lannes Smith; Ph.B., Chicago, 1933. A Socio-Political Study of the American Social Scientists. *Chicago.*

Johan C. TeVelde; A.B., Calvin, 1934; A.M., Iowa, 1935. The Political Science of John Dewey. *Chicago.*

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Margaret W. Thal-Larsen; A.B., California, 1934. Political and Economic Ideas of American Utopias. *California.*

Audrey G. Townsend; A.B., Southwestern, 1932; A.M., Radcliffe, 1938. The Fabian Socialists as Political Liberals. *Radcliffe.*

John Higgins Williams; A.B., Washington and Lee, 1924; A.M., *ibid.*, 1928. The Rise and Decline of the Compact Theory in the United States. *North Carolina.*

GOVERNMENT AND POLITICS OF THE UNITED STATES AND ITS DEPENDENCIES

Wesley Adams; A.B., Northwestern, 1935; A.M., *ibid.*, 1936. Some Phases of American Neutrality Legislation. *Northwestern.*

Spencer D. Albright, Jr.; A.B., Arkansas, 1922; A.M., Chicago, 1932. Ballot Analysis and Ballot Changes Since 1930. *Texas.*

James Johnston Anderson; A.B., Cornell, 1934; M.B.A., Harvard, 1936. The President's Supreme Court Proposal—A Study in Presidential Leadership and Public Opinion. *Cornell.*

Robert D. Baum; A.B., Williams, 1934; A.M., Columbia, 1935. Federal Aspects of National Power Policy. *Columbia.*

Hillman M. Bishop; A.B., Columbia, 1926. Rhode Island and the Federal Constitution. *Columbia.*

Philip I. Booth; A.B., Arizona, 1930. Criminal Syndicalism Legislation in the United States. *Chicago.*

Karl A. Bosworth; A.B., Nebraska, 1931; A.M., Kansas, 1936. American Interjurisdictional Relations, 1930–40. *Chicago.*

Helen R. Brooks; A.B., Radcliffe, 1934; Ed.M., Harvard, 1936. The Apportionment Rule of the United States Civil Service. *Radcliffe.*

Norman R. Buchan; A.B., Michigan, 1922; A.M., Indiana, 1930; LL.B., *ibid.*, 1931. Reporting Politics. *Ohio State.*

Lynton K. Caldwell; Ph.B., Chicago, 1934; A.M., Harvard, 1938. Josiah Quincy: Public Servant. *Chicago.*

Persia Campbell; A.M., Sydney, 1921; M.Sc. (Econ.), London, 1923. Consumer Representation in the New Deal. *Columbia.*

Asher N. Christensen; A.B., Minnesota, 1924. A Study of the Legislative Settlement of Contested Election Cases. *Minnesota.*

Arthur W. Crawford; A.B., Beloit, 1906; A.M., American, 1935. Monetary Developments during the First and Second Terms of the Franklin D. Roosevelt Administration. *American.*

John Aubrey Davis; A.B., Williams, 1933; A.M., Wisconsin, 1934. The Negro in Politics in New York. *Columbia.*

Eleanor Elizabeth Dennison; A.B., Denver, 1925; A.M., *ibid.*, 1930. The Senate Committee on Foreign Relations. *Stanford.*

Marvin Downey; A.B., Virginia, 1931; A.M., *ibid.*, 1934. The Committee on Rules of the United States House of Representatives. *Chicago.*

George R. Dulebohn; A.B., Gettysburg, 1921; A.M., *ibid.*, 1933; A.M., Pennsylvania, 1930. The Foreign Policies of Grover Cleveland. *Pennsylvania.*

Robert L. Fisher; A.B., Stanford, 1931; A.M., *ibid.*, 1933. The Administration of Minor Parties in the United States. *Columbia.*

Hilton P. Goss; A.B., Harvard, 1926. The Presidential Campaign of 1912. *California.*

Wayne Clayton Grover; A.B., Utah, 1935; A.M., American, 1937. Some Aspects of

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Earl T. Hanson; Ed.B., Southern Illinois State Teachers College, 1933; A.M., Illinois, 1937. Special Groups in Congress. *Illinois.*

Wiley Edward Hodges; B.S., Roanoke, 1926; A.M., Duke, 1930. The Trend of *Laissez-Faire* in Virginia from the Colonial Period to 1832. *Duke.*

Robert A. Horn; A.B., Ohio Wesleyan, 1937. The Influence of Committee Organization and Procedure upon Congress. *Princeton.*

Jerry Housel; A.B., Wyoming, 1936; LL.B., *ibid.*, 1936. The Senate Foreign Relations Committee. *American.*

Howard K. Hyde; A.B., Fletcher, 1934; A.M., Chicago, 1935. The American Telephone and Telegraph Company; A Study in Large-Scale Organization. *Chicago.*

Laulette L. Irvin; A.B., Goucher, 1935; A.M., Columbia, 1935. Political Education by Women's Organizations in the United States. *Chicago.*

Gerald I. Jordan; A.B., Marshall, 1936. Politics and the Supreme Court, 1860–1880. *U. C. L. A.*

Alexander F. Kiefer; A.B., Columbia, 1937; A.M., *ibid.*, 1938. Financial and Trade Measures as Implements in American Foreign Policy. *Columbia.*

Donald R. Larson; A.B., Augustana (S.D.), 1936; A.M., Texas, 1938. The Origin, Development, and Use of the Veto Power of the President of the United States, with a Comprehensive Digest of all Veto Messages. *Texas.*

David M. Levitan; B.S., Northwestern, 1936; A.M., *ibid.*, 1937. The Growth of the President's Control of Foreign Relations under Constitutional and International Law. *Chicago.*

William McAleer; A.B., Buffalo, 1936. America's Interests in Its Unconditional Most-Favored-Nation Policy. *Clark.*

Virginia Manca; A.B., California (L.A.), 1931. Congressional Procedure on Authorizations and Appropriations in Relation to the National Budget. *Washington* (Seattle).

Edwin M. Martin; A.B., Northwestern, 1929. Influence of Organized Economic Groups on Federal Tax and Tariff Legislation from 1921 to 1933. *Northwestern.*

Willard C. Matthias; A.B., Iowa, 1936; A.M., Minnesota, 1938. The Formation of Labor Policy under the New Deal. *Harvard.*

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Welden Moore; A.B., Harvard, 1922. The American Navy Bill of 1916. *Columbia.*

Paul D. Mulkey; B.Ed., Southern Illinois Normal University, 1935; A.M., Illinois, 1936. Congressional Investigation of Subversive Activities. *Illinois.*

Wallace J. Parks; A.B., Williams, 1932; LL.B., George Washington, 1937. Federal Import Control. *Columbia.*

A. Edward Patmos; A.B., New York University, 1935; A.M., *ibid.*, 1936. Some Recent Attempts of Non-Political Organizations to Influence Federal Legislation. *New York University.*

Howard Rae Penniman; A.B., Louisiana State, 1936; A.M., *ibid.*, 1938. The Socialist Party in the 1940 Election Campaign. *Minnesota.*

Bennett M. Rich; A.B., Waynesburg, 1930; A.M., Michigan, 1932. The Rôle of the President as the Preserver of Domestic Peace. *Michigan.*

Liba Harold Studley; B.S., C. C. N. Y., 1931; LL.B., Fordham, 1925. A.M., Columbia, 1929. Progress of Aviation Legislation in the United States. *Columbia.*

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Wilfred D. Webb; A.B., Arkansas, 1931; A.M., *ibid.*, 1933; LL.B., *ibid.*, 1935. The Interstate Oil Compact; Its Background and Development. *Texas.*

August-Reynold Werner; LL.B., University of Geneva; LL.D., *ibid.* American Neutrality. *Indiana.*

Albert C. F. Westphal; A.B., Columbia, 1929. The House of Representatives and American Foreign Policy. *Columbia.*

CONSTITUTIONAL AND ADMINISTRATIVE LAW IN THE UNITED STATES

Fredericka C. Ahrens; A.B., Wooster, 1937. Development of Case Law in the Clothing Industry. *Chicago.*

William Beard; B.S., Massachusetts Institute of Technology, 1928; A.M., California (L.A.), 1938. Federal and State Regulation of Pipe Lines as Common Carriers. *Columbia.*

Frank H. Blumenthal; A.B., Swarthmore, 1936. Judicial Interpretation of Anti-Injunction Legislation. *Princeton.*

Eleanor Bontecou; A.B., Bryn Mawr, 1913; J. D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

Otis Franklin Brubaker; A.B., Kansas, 1935. Recent Federal Labor Regulation. *Stanford.*

Alvah J. Cagle; A.B., Baylor, 1922; A.M., Iowa, 1926; LL.B., Baylor, 1931. Judicial Construction and Reconstruction of the Due Process Clause. *Texas.*

Fred V. Cahill; A.B., Nebraska, 1937. The American Concept of the Judicial Function. *Yale.*

Turner, C. Cameron, Jr.; A.B., Alabama, 1936; A.M., Louisiana State, 1937. Commentators on the Constitution of the United States. *Princeton.*

John Stitlington Guy Carson; A.B., Hampden-Sidney, 1923; A.M., Virginia, 1931. The Constitutional Doctrines of Charles Evans Hughes. *Virginia.*

Willard B. Cowles; A.B., Columbia, 1928. Constitutional Law and Treaties: Property Interference and Due Process of Law. *Columbia.*

Harry Lee Cummings; A.B., Arkansas State Teachers' College, 1927; A.M., Iowa. 1930. The Constitutional Doctrines of Mr. Justice Brandeis. *Iowa.*

James William Davis; A.B., Texas A. & M. College, 1928; A. M., Texas, 1931. The Commerce Clause as a Limitation on the Taxing Power of the States. *Texas.*

Richard H. Ernst; A.B., Minnesota, 1933; A.M., Princeton, 1935; LL.B., Yale, 1938. The Administrative Adjudicative Technique as Used by the National Labor Relations Board. *Princeton.*

Delavan P. Evans; A.B., Occidental, 1933. The Use of the Concept of Inherent Powers by the Supreme Court of the United States. *California.*

Edmund Cody Gass; A.B., Carson-Newman, 1927; A.M., Tennessee, 1931. The Eleventh Amendment. *North Carolina.*

William L. Grossman; A.B., Harvard, 1927; A.M., *ibid.*, 1928; LL.B., *ibid.*, 1932. The Property Clause of the Federal Constitution. *Columbia.*

Georgia Hamilton; A.B., Barnard, 1926; A.M., Columbia, 1927; J. D., New York University, 1930. The Trends in Governmental Liability and the Liability of Public Officers in the United States since 1890. *Chicago.*

Chester Ferrel Heady, Jr.; A.B., Washington, 1937; A.M., *ibid.*, 1938. The Supreme Court as Arbiter of Disputes between States. *Washington* (St. Louis).

Rodney G. Higgins; B.Ed., Southern Illinois State Normal University, 1935; A.M., Iowa, 1936. The Validity of Certain Objections to the Adoption of the U. S. Constitution. *Iowa.*

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Harry William Johnstone; A.B., Washington, 1935. Judicial Unenforceability of the Written Constitution. *Washington* (Seattle).

Samuel J. Konefsky; A.B., Brooklyn, 1937; A.M., Columbia, 1938. Legal Philosophy of Mr. Justice Stone. *Columbia.*

William L. LaRue; A.B., Northwestern, 1933. Patents and Copyrights in American Public Law. *Princeton.*

Charles O. Lerche, Jr.; A.B., Syracuse, 1937; A.M., Fletcher School, 1938. The Constitutional Guarantee of Republican Form of Government in the United States. *North Carolina.*

Aaron Lewittes; B.S.S., C. C. N. Y., 1932; LL.B., Columbia, 1935. Judicial Review and the Problem of an Independent Administrative System. *Columbia.*

Ezekial Limmer; A.B., Brown, 1933; A.M., Columbia, 1934. Minimum Rate Regulation by the Interstate Commerce Commission. *American.*

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Vera McLaren; A.B., Southern California, 1924; A.M., Northwestern, 1929. The Doctrine of Public Interest. *Northwestern.*

Joseph McLean; A.B., Lafayette, 1937. Mr. Justice Day. *New York University.*

Maurice Meredith; A.B., Illinois, 1936; A.M., *ibid.*, 1938. Recent Developments in the Public Law of National-Local Relations. *Minnesota.*

Donald D. Morgan; A.B., Cornell, 1933; Ed.M., Harvard, 1938; A.M., *ibid.*, 1939. The Constitutional Thought of Justice William Johnson. *Harvard.*

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Frederic D. Ogden; A.B., Tusculum, 1938. Governmental Regulation of Foods, Drugs, and Cosmetics. *Johns Hopkins.*

John A. Schroth; A.B., Princeton, 1932; A.M., *ibid.*, 1934. Dual Federalism in American Constitutional Law. *Princeton.*

Foster H. Sherwood; A.B., 1938, U. C. L. A. The Theory of the Separation of Powers in its Relation to Administrative Legislation and Adjudication. *U. C. L. A.*

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Ceph Leroy Stephens; B.S., Ohio State, 1929; A.M., *ibid.*, 1930; The Writ of Mandamus as a Means of Administrative Control in Ohio. *Ohio State.*

Owen Scott Stratton; A.B., Reed, 1938. State Taxation and the Commerce Clause. *Stanford.*

Albert L. Sturm; A.B., Hampden-Sidney, 1933; A.M., Duke, 1940. Emergency as a Justification for the Exercise of Executive Power during the Roosevelt Administration. *Duke.*

Alexander J. Walker; A.B., Iowa, 1936; A.M., *ibid.*, 1938. The Constitutional Doctrines of Oliver Wendell Holmes. *Iowa.*

George H. Watson; A.B., Miami, 1936; A.M., Illinois, 1937. The Concept of the Legislative Court. *Chicago.*

Harry O. Wilson ; A.B., Harvard, 1931; A.M., *ibid.*, 1932. The Trial Examiner in the National Labor Relations Board; A Study of Quasi-Judicial Development in an Administrative Body. *Northwestern.*

AMERICAN STATE AND LOCAL GOVERNMENT AND POLITICS

John F. Allums; B.S., Miss. State Teachers, 1933; A.M., Iowa, 1937. Newspaper Contributions to Intelligent Citizenship; A Study of Press Reports on the Government of Atlanta, Georgia. *Iowa.*

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Lawrence L. Barber, Jr.; A.B., Harvard, 1937. Local Government in New England. *Harvard.*

Bernard L. Barnard; A.B., Kansas, 1928; A.M., *ibid.*, 1932. Bicameralism in Kansas. *American.*

F. J. Barnes, II; A.B., William and Mary, 1927; A.M., *ibid.*, 1927. The City in Virginia. *North Carolina.*

Harald Bergerson; A.B., Puget Sound, 1931. Public Employee Relations in Seattle. *Chicago.*

Walter Thompson Bogart; A.B., California (L.A.), 1930; A.M., Stanford, 1931. Jurisdictions, Functions, and Geography of Government in Los Angeles County. *Stanford.*

R. Jean Brownlee; A.B., Pennsylvania, 1934; A.M., *ibid.*, 1936. Income Taxation in Delaware. *Pennsylvania.*

Oscar Buckvar; B.S., C. C. N. Y., 1923; A.M., Columbia, 1925. Pressure Groups before the New York Board of Estimate and Apportionment. *Columbia.*

Yu Lai Chan; LL.B., Fuh Tan University (China), 1936; A.M., Iowa, 1939. Police Powers of the State of Iowa; A Study in the Constitutional Law of Iowa. *Iowa.*

Donald A. Crawford; A.B., Stanford, 1937. Administration of Labor Legislation in California. *Stanford.*

Frederick William Dumschott; A.B., Washington College, 1927; A.M., Virginia, 1931. State Administrative Control of Cities in Maryland. *American.*

J. Kirk Eads; A.B., Columbia, 1936; A.M., *ibid.*, 1937. Theory and Practice of State Control over the Local Unit. *Indiana.*

Lavinia M. Engle; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins.*

Harold R. Enslow; A.B., Kansas, 1926; A.M., Illinois, 1927. Property Taxation in New York. *Pennsylvania.*

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Mona Fletcher; B.S. in Ed., Kent State University, 1921; A.M., Chicago, 1924. Bicameralism in Ohio. *Ohio State.*

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The Life and Times of William Howard Taft. By Henry F. Pringle. (New York: Farrar and Rinehart, Inc., 1939. Vol. I, pp. xii, 555; Vol. II, pp. viii, 556–1106. $7.50.)

Mr. Pringle has written a very valuable and extremely readable biography of William Howard Taft. He was fortunate in being given unrestricted access to the enormous collection of Taft papers, private and official, on deposit in the Library of Congress, and it was this collection which, as Mr. Pringle himself states, constituted the principal source for his biography. This fact becomes all the more significant when one remembers that when Mr. Pringle was preparing his biography of Theodore Roosevelt, the executors of the estate permitted him to examine the Roosevelt letters and papers, but stipulated that nothing after March, 1909, was to be used. As might be expected, therefore, this new biography throws much additional light on the Roosevelt-Taft controversy; and it must be admitted at once that Mr. Pringle's sympathies are generally to be found on the side of Taft. His disclosures of fact have also brought Taft champions from strange places. Secretary of the Interior Ickes was so moved by the Pringle recital of the Ballinger case that he ordered an examination of the files in his office and then published an article in a popular periodical completely exonerating Mr. Ballinger from the charges made against him.

Few men in American public life have had careers to match that of Taft. In addition to minor government posts, he was a federal circuit judge, civil governor of the Philippines, Secretary of War, President, and Chief Justice of the Supreme Court. The latter post was the one he coveted and cherished most, once it had been attained. As early as July, 1889, when Taft was only thirty-two years of age, he had his eye on the Supreme Court of the United States. Time after time, his high sense of duty caused him to pass by appointments to that Court, and it was only after he had given up hope of ever becoming a member of it that his life-long ambition was fulfilled.

Many influences entered his life. Certainly one of the most important was his wife: "You are my dearest and best critic and are worth much to me in stirring me up to best endeavor," he wrote to her (p. 149). His public career was dictated largely by Mrs. Taft's ambition and desires. Family ties were strong. Rarely did Taft make an important decision without consulting his brothers, and the financial assistance of Charles P. Taft made many things possible for him. Finally there was the influence of Theodore Roosevelt, who selected Taft as his successor to the presidency and later turned against him, thus precipitating one of the bitterest quarrels in American party history. Because the biography is so greatly based

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on the Taft correspondence, there is a wealth of illuminating personal comment which adds much zest to the unfolding of the story.

Taft was born in Cincinnati on September 15, 1857. Alfonso Taft, his father, had moved westward from Vermont, and his mother was a native of Milbury, Massachusetts. Alfonso Taft himself was not without a certain degree of political success. In addition to becoming a member of President Grant's cabinet, he served as minister to Vienna and to St. Petersburg. To William Howard Taft's New England heritage was added an education at Yale University, where Bill Taft, as his friends called him, was marked both by his size and scholarship. His ties with Yale continued strong throughout his life. In January, 1899, he was offered but refused the presidency of the University. After his defeat for reëlection to the presidency of the United States, he spent eight happy years as a professor in the Yale Law School.

Graduation from Yale was followed by study at the Cincinnati Law School. On October 25, 1880, Taft was appointed assistant prosecutor of Hamilton county, and, with brief exceptions, he was in some public office until March 4, 1913. His career was marked by industry, integrity, and a high sense of duty. Despite his long service in political life, he had an ineptitude for the complicated art of politics. He himself once remarked that it seemed strange that with an effort to keep out of politics and with a real dislike for it, he should be pitched into the middle of it. It was with reluctance that he became a candidate for the presidency.

Taft was also inept in his handling of newspaper correspondents. He was always signally unsuccessful in his attempts to swing public support behind his measures. In one chapter entitled "Forgotten Credits," and another called "More Credits," Mr. Pringle relates certain definite accomplishments of Taft's presidency for which too little credit has been awarded him. His fellow-justices on the Supreme Court at any rate did not fail to appreciate his sterling qualities. In the days of his final illness, through the pen of Justice Holmes, they paid tribute to "your humor that smoothed the tough places, your golden heart that brought you love from every side and most of all your brethren whose tasks you have made happy and light" (p. 1079).

Until the private and official papers on which Mr. Pringle has based this biography are published, these two volumes will be an indispensable source of information to students of American history and government.

EVERETT S. BROWN.

University of Michigan.

The Incredible Era; The Life and Times of Warren Gamaliel Harding. BY SAMUEL HOPKINS ADAMS. (Boston and New York: Houghton Mifflin Company. 1940. Pp. ix, 457. $3.00.)

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Calvin Coolidge; The Man from Vermont. By Claude M. Fuess. (Boston: Little Brown and Company. 1940. Pp. xii, 522. $4.75.)

Here we have the histories of two men alike only in their mental incapacities to fill the big job to which they were elected. That one of the two whose administration will be remembered as outstanding for its sordid corruption possessed a personality beloved by the nation at large; the one whose administration will be remembered for its general honesty and lack of all imagination possessed the personality of an icicle.

These two men personified an era which marked the end of Wilsonian idealism and the progress of economic and political exploitation at a giddy speed that was destined to end in the general collapse of 1929. In neither of these works is there any substantial contribution to already existing knowledge of these men. This is not said in derogation of either work. Yet from the point of style, *The Incredible Era* makes easier and more entertaining reading. It also enjoys the very human advantage of dealing with subject-matter containing an over-abundance of villainy and tragedy. The portrait of Harding is drawn with a sympathetic hand—a good-natured and not too able man deceived and betrayed by his best friends. The reader will feel alternately grieved and annoyed at the man who allows himself to be pushed around first by conniving politicians and secondly by an ambitious wife. From the moment that he allowed himself to be engineered into the presidential nomination, he lived a miserable existence, which was brought to a merciful end by his sudden death at the St. Francis Hotel in San Francisco. All mystery regarding President Harding's death disappears—a man completely worn out by the disappointments and difficulties of a tremendous job simply dies from natural causes. On this point, the author is thoroughly convincing. As little as possible under the circumstances is made of Harding's extra-curricular activities in the realm of morals. The public, perhaps, is already sufficiently apprised of these muddy details.

Drab indeed seems the life of Calvin Coolidge after a reading of the career of Warren Harding. If the life of Coolidge is unmarred by tragedy or by anything of questionable nature, so is it singularly unmarked by humor. The author of the life of Calvin Coolidge tells a dry story with much emphasis upon the Vermont Yankee theme and much attention to detail. Having read the saga of Warren Harding, one feels in reading the life of Coolidge as if he were groping through endless passages of Puritan gloom. The Coolidge work, however, is scholarly and done with meticulous care.

Jerome G. Kerwin.

University of Chicago.

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The Foreign Policies of Herbert Hoover, 1929–1933. By William Starr Myers. (New York: Charles Scribner's Sons. 1930. Pp. x, 259. $2.50.)

In these days of torment, America is sadly cognizant of the fact that we have never clearly defined the objectives that our foreign policy should seek to achieve. Certainly now, with great decisions yet to be made, any sizable contribution to the solution of the riddle that is American foreign policy is more than welcome.

Professor Myers' book constitutes an important link in the chain of events, because it deals with the United States during the period of world transition—that tragic era when order first began to give way to chaos, when large-scale aggression first tested the staying powers of international organization. It is significant, too, because the ideas of Mr. Hoover were of no little importance in shaping the foreign policy of the Roosevelt Administration.

The author plainly states at the outset that he is not concerned with an interpretation of the rôle of the United States in world affairs during Mr. Hoover's régime. Rather, he is interested in Hoover's personal contribution to American foreign policy. With this in mind, he frequently cites the letters, speeches, and private papers of Mr. Hoover, often presenting long extracts to prove his point.

Mr. Hoover is pictured as a "typical Quaker," a man of peace. But his ideas about world peace have been the result of a "masterful handling of realities and not the weak emotionalism of the idealistic and inexperienced enthusiast." In other words, charges the author, Americans are too prone to forget that Mr. Hoover's wide experiences in many years abroad had made of him a keen student of foreign affairs even before he took office in 1929.

Then, like a barrister before the jury, Professor Myers introduces considerable convincing evidence to free his misunderstood and misrepresented client from conviction of the crime of isolationism. Hoover, he says, "is not, and never has been, an isolationist or a narrow-minded nationalist." He supported the World Court, advising Secretary Stimson to sign the protocols (Chap. II). He frowned on the idea of dollar diplomacy and gave original impetus to the Good Neighbor policy by beginning the withdrawal of our marines from Latin America (Chap. III). He was largely responsible for the success of the London Naval Conference (Chaps. IV, V), later advancing significant plans for the reduction of land forces (Chap. VIII). He disapproved the congressional theory of tariffs for the protection of specific industries (Chap. VII). He was personally responsible for the doctrine of non-recognition and repeatedly expressed a willingness to coöperate with the rest of the world—in the field of "moral pressures"—against aggression. Finally, his extensive knowledge of war debts and international economic problems might have enabled

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him to encourage world recovery had he been able to secure the support of President-elect Roosevelt in the months prior to March 4, 1933 (Chaps. X, XI, XII).

Under different circumstances, the book might make good campaign material for 1940. Certainly the author is a convinced Hooverite. Rarely, if ever, does he utter a word of reproach or criticism. Rather, by frequent comparisons with the foreign policy of the New Deal he manages to place Mr. Hoover's contribution in the field of foreign affairs on the pinnacle which he seems to think it so richly deserves. Thus his concluding paragraph: "Never in our history was peace more assured to the American people or did the United States stand higher in the esteem of the world than on March 4, 1933. Hoover's record stands as an open book to be read by the American people."

Whether one shares his belief or not, the author is sincere and makes his point very well. In any case, the book is recommended to all students of foreign affairs—and just now that seems to include nearly everybody.

FRANCIS O. WILCOX.

University of Louisville.

The Politics of Democracy. By PENDLETON HERRING. (New York: W. W. Norton and Company. 1940. Pp. xi, 468. $3.00.)

This book is required reading. In thirty brief chapters, Professor Herring traverses some familiar ground covered by conventional textbooks on American parties plus a variety of subjects never treated by the writers of these manuals. In his own words, the author's purpose is to reëxamine the "rogues gallery" of American politics: machine control, pressure politics, propaganda, monied interests, patronage, and bureaucracy, though he does not confine himself to these topics strictly. The book opens with several chapters on democracy and ranges widely before it gets to "The Animating Spirit of American Progress" in Chap. XXX. Though much of the ground is familiar, the treatment throughout is highly original, based on a genuine reconsideration of the material. As a consequence of this reëxamination, the whole subject undergoes a substantial transformation.

The Politics of Democracy is written in the new mood. Confronted with the prospect of losing our institutions, we look at them with new eyes and discover that even the faults of the system have something to be said for them. This is a mark of the times. Thus Herring says that "the application of critical standards too high for human attainment" tends to produce "an unhealthy sense of frustration which may lead to disillusionment and even cynicism." Therefore, he repudiates the conventional attitude of uncompromising criticism and substitutes for it a more charitable set of standards. This is the standpoint, resolutely maintained throughout, from which the book is written, producing what is probably

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the most thoroughgoing defense of American politics ever written by a reputable scholar. The defense is made shrewdly, with great insight, and the effect is sometimes startling. The point of view is not entirely new. Even the politician has had his apologists. What distinguishes this apology from all others is that it has been made by a competent scholar able to meet the critics on their own ground. It is extremely interesting to see how often, and for what ingenious reasons, Professor Herring is able to discover that the politicians and their parties, as they are, are admirable, or good, or satisfactory, or could be worse.

It would be idle to pretend that the author has been able to vindicate the "rogues" in his gallery on all counts. Herring gets himself into real difficulties (*vide* the chapter on "The Uses for National Conventions"). It is probably no more scientific to praise than it is to blame. The book is so provocative that the reader will be delighted and dismayed in almost equal proportions. The emphasis on the irrational basis of politics is at times so urgent that one is reminded of a rebuke once given by Mr. Justice Holmes to another school of thought. (Mr. Holmes said that our connection with the past is merely a necessity, not a duty.) Nor is it easy to follow the logic by which the local confusion exploited by party bosses is identified with democracy. Finally, the author makes extensive use of the flat assertion of propositions that do not lend themselves to easy verification. This method has its own special advantages. Many propositions do not require demonstration, and a little dogmatism saves much space. It is to be regretted, however, that the author did not display his evidence on some of these controversial points. The present reviewer has tried the experiment of inserting negatives at convenient places in the text, reversing some confident assertions without substantially diminishing their persuasiveness. Nevertheless, Professor Herring illuminates the issues he creates. His book does something to the subject.

E. E. SCHATTSCHNEIDER.

Wesleyan University.

Federal Regulatory Action and Control. By FREDERICK F. BLACHLY AND MIRIAM E. OATMAN. (Washington: The Brookings Institution. 1940. Pp. 356. $3.00.)

Federal Regulatory Action and Control is a significant contribution to the field of public administration. It is particularly important at the present time because of the demands for changes in the organization and procedure of the federal administrative agencies. The proponents of recent legislation to alter the organization and procedure of the administrative agencies could have read with much profit the pages of this important book.

According to the authors, there are three conflicting doctrines of public

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administration which are struggling for domination of the federal government. These are (1) the doctrine of executive management, (2) the doctrine of the judicial formula, (3) the revisionist doctrine.

The essential feature of the doctrine of executive management is the assertion that all administrative activities of the federal government should be under the control of the Chief Executive. Those who advocate the doctrine of the judicial formula argue that the thing to be most feared in federal administration is administrative absolutism, and they would compel the administrators to act, in so far as possible, according to the judicial formula of notice and hearing, and would subject to judicial review almost every act of administrative authorities which could even remotely affect rights. The advocates of the revisionist doctrine regard the present federal administrative system as fairly satisfactory, but advocate certain improvements.

The creation of large independent boards and commissions which exercise all three powers of government is due chiefly to the relationship inherent in policy and management regulation. It has been the need for an expert treatment of this relationship which has caused Congress to create such agencies as the Federal Trade Commission and the Interstate Commerce Commission and others. The expansion of the managerial functions of some of these commissions has explained in part their organization and procedure. The issuance of certificates of convenience and necessity, decisions whether to extend or reduce business operations, fixing of rates, determining when and under what conditions money shall be borrowed and securities issued, fixing the rates at which services shall be sold, and the performance of many other functions by these commissions are essentially functions of management.

One of the most interesting chapters of the book is that which deals with and distinguishes the various forms of administrative action, such as rules and regulations, administrative decisions, administrative orders, administrative stipulations, consent decrees, executive orders, and executive and administrative proclamations. The authors go to some length to point out the differences between administrative orders and administrative decisions, and list the agencies which make the most use of these two forms of administrative action. The order is employed chiefly in the field of economic regulation. Although the administrative decision is used to some extent in this field, it is more often employed to take actions of a police nature. Furthermore, administrative decisions usually involve a broad discretion, whereas orders, while involving some discretion, rest upon facts found on the basis of evidence. Also, administrative decisions are often self-executing or are enforced by administrative action, whereas the great majority of orders which affect rights are enforceable only by the courts.

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The last three chapters of the book are devoted to the development of the three conflicting doctrines of public administration. Perhaps the most important contribution of the volume is its analysis and criticism of the executive management theory, and its critique of the proposals of the American Bar Association which uphold the doctrine of the judicial formula. With regard to the former, the authors point out that there are relatively few instances where the independent regulatory boards and commissions exercise a prosecuting function in connection with their main activities. The question of separating the functions of prosecution and adjudication seldom arises in a practical way. In criticising the proposals of the American Bar Association, the authors, while admitting that the proposals have some merit, point out that in most regulatory and managerial situations the subject-matter is too complex and diversified to be subject to hard and fast rules and regulations.

FORD P. HALL.

Indiana University.

The Development of Congressional Investigative Power. BY M. NELSON MCGEARY. (New York: Columbia University Press. 1940. Pp. 172. $2.25.)

This book takes up the story of congressional investigations where the studies made by Ernest J. Eberling and Marshall E. Dimock left off in 1928. The purposes of investigations are classified into four categories: public enlightenment, administrative supervision, legislative assistance, and membership investigations. We are reminded that inquiries may be instigated either to curb the Administration or to forward its policies. Purely personal ambitions on the part of members of Congress are also important factors. The inherent diversity of the author's materials makes generalization difficult, yet the points brought into focus show the nature of the investigatorial process clearly and succinctly. Particularly noteworthy is the emphasis placed upon the present procedures and future methods of the committees.

Dr. McGeary concludes that "the fundamental legitimate end of congressional investigations would seem to be, in the final analysis, an unbiased uncovering of all the facts on a given subject." He recognizes, however, the difficulty of objectivity and proposes that the actual assembling of facts be turned over to agencies outside of Congress. The legislators might study the data collected and hold open hearings to permit the expression of other opinions or to arouse public support. However, it would not be wise for Congress to delegate its duty of checking up on executive activities. Only on broad public questions of fact and policy do special commissions of inquiry seem preferable. The critical survey of the work of such recent *ad hoc* agencies is very interesting and useful. The

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Temporary National Economic Committee is not a form of organization that the author would like to see used widely.

In discussing the attitude of the courts, the author finds that "the law as it now stands permits the conduct of inquiries in an area about as wide as the legislators may wish, especially if legislative intent is expressed in the resolution of authorization." Dr. McGeary has brought together in brief compass the high points of recent investigative activity in Congress. His emphasis is upon the political and procedural problems.

PENDLETON HERRING.

Harvard University.

Benjamin N. Cardozo: American Judge. BY GEORGE S. HELLMAN. (New York: Whittlesey House. 1940. Pp. ix, 339. $3.50.)

Students of the Supreme Court and its personnel have hoped for a broader and deeper study of the life of Mr. Justice Cardozo than has thus far been provided. The significance of his writings, including opinions for the Court of Appeals of the State of New York and the Supreme Court of the United States and his various public lectures, is fully appreciated. It has been assumed that his life was one of peculiar richness and that only in the deeper well-springs of a poetic and brilliant mind could be found the source of his great contribution to American law. Mr. Hellman, a man with an established literary reputation, presents a portrait of that life, not so much for students of jurisprudence as for persons whose fundamental interest is in the personality of the man.

The book brings together a great deal of personal information ranging over the entire period from Cardozo's birth until his death. The materials are woven together with the skill of a literary artist. No footnotes or bibliography are included, however, and some of the sources are indicated only in the most general way.

For students of political science, the tone in which the book is written constitutes a serious flaw. It is the kind of book which a family might publish about a beloved member for private distribution among relatives and friends. It is highly sentimental in tone. Such words as reverence, shyness, modesty, love, lovely, beloved, affection, saint, faith, religion, and others of the kind are thickly sprinkled throughout its pages. While language of delicacy is no doubt necessary for the adequate portrayal of the life of Mr. Justice Cardozo to any audience, it is not necessary to cover the subject-matter with a tide of emotion. To some extent, no doubt, the objectionable quality of the book is the consequence of lack of robustness and lack of dramatic activity on the part of Cardozo himself. Mr. Justice Holmes once said of his own life that "since 1865 there hasn't been any biographical detail." If this was true of Holmes, there was no biographical detail at all to aid the biographer of Cardozo. Furthermore,

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Cardozo lacked the healthy overflow of animal spirits which characterized Holmes, expressing itself in "grand army language" and in touches of ribaldry. To give a well-known example, whereas Holmes could laugh boisterously at a Washington burlesque show and thank God that he was a man of low tastes, Cardozo walked out of a Shubert display of feminine pulchritude, quietly explaining that he had work to do.

The sentimentality of the book makes its appearance, however, not in quotations from Cardozo, but in the language of the author himself and in the selected quotations from other persons which he sees fit to use. It is possible that another writer with access to the same significant materials could write a more valuable book with less offense to the sensibilities of his analytical readers.

CARL BRENT SWISHER.

Johns Hopkins University.

Criminal Appeals in America. BY LESTER BERNHARDT ORFIELD. (Boston: Little, Brown and Company. 1939. Pp. 321. $5.00.)

This is the first volume of the Judicial Administration Series published under the auspices of the National Conference of Judicial Councils. The director of the Conference, Roscoe Pound, will indeed be fortunate if the rest of the volumes of the series live up the high standard of scholarship set by this initial study. Most of the chapters have already been published by Professor Orfield as law review articles, but they are so thoroughly integrated that the reader has no feeling of reading a collection of essays. The book is carefully and logically organized, the style is readable, and the conclusions are, for the most part, well supported by the evidence presented. Technical problems are not avoided, but they are presented in such a direct and clear manner that they should be understood by any intelligent reader.

The right to appeals is a recent development in the field of criminal law. Although appeals have been permitted in civil cases for centuries, the common remedies for injustice in criminal proceedings were the petition for a new trial, for a writ of habeas corpus, for a writ of error, for a pardon, or even for legislative action. The present-day system of appeals in criminal cases is less than a century old in the United States, and in England it dates only from 1907. Perhaps because of its youth, the character of criminal appeals presents almost innumerable forms. The states seem to vie with each other in their efforts to be original, and the federal and English systems differ from those of any state.

The author believes that the English system of criminal appeals is considerably superior to that prevailing in most of the American states. Indeed, he prefers it to the Code of Criminal Procedure proposed by the American Law Institute, and even to the new federal court rules. He

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stoutly defends the right of the convicted man to appeal from decisions on both law and facts. This right, however, does not imply a right to use the appeals for the sole purpose of delay; for it should be restricted by limiting multiple appeals, by shortening the time allowed for the appeal and for its consideration, and by simplifying appellate procedure, especially by reducing the bulk of the appeal papers. As the author points out, most of the states could make substantial improvements in these respects.

Some of the other proposals of Professor Orfield are perhaps more debatable. His argument that criminal appeals should always go directly to the court of last resort is based on the danger of multiple appeals if an intermediate court is used. As against this, however, it is necessary to balance the danger of congestion in the highest court if it is compelled to hear a substantial number of criminal appeals. In the larger states, this might even prevent the highest court from performing its most important function, namely, the development of the law. Many students will disagree also with the author's argument against permitting the prosecution to appeal. Although the privilege is seldom used even where it is permitted, and in some cases may be harmful or even unfair, it is hard to see how the prevailing over-cautious attitude of trial judges can be prevented so long as only one of the parties can appeal from his decisions.

The power of the English Court of Criminal Appeals to increase as well as to reduce sentences is often cited as one of the important advantages of British justice. The author concurs in the desirability of giving appellate tribunals both powers. Nevertheless, he believes that neither the trial courts nor the appellate courts are suited by either training or methods of work to pass on the propriety of sentences. This is a job for the criminologist, the psychiatrist, and the sociologist. Accordingly, he would make use of special sentencing tribunals composed of these specialists, giving the criminal a right to appeal from its decision only if the tribunal exceeded its jurisdiction, were corrupt, or acted in an arbitrary manner.

It is impossible, in a brief review, to do justice to the thorough analysis of each point, to the careful comparison of procedures in different jurisdictions, or to the painstaking research of the author. Political scientists may regret that relatively little attention is given to the political aspects of criminal justice. The student of judicial administration as a science will undoubtedly feel that too little attention is given to use of statistical material to verify the author's assumptions. Although a valuable, and fairly complete, bibliography of statistical data on criminal appellate courts is included, Professor Orfield tends to minimize the importance of this material. However unfortunate this attitude may be, it cannot detract from the solid value of the author's contribution. No one could hope to do a thorough job of studying the system of criminal appeals in the United States without doing just what Professor Orfield has done, and

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there are few who would have done it so well. With this basis now laid, a really scientific study of criminal appeals can be made. It is to be hoped that the present volume will entice someone to use the modern techniques of the social sciences to test the hypotheses so clearly laid out in it.

RODNEY L. MOTT.

Colgate University.

Law, the State, and the International Community. By JAMES BROWN SCOTT. (New York: Columbia University Press. 1939. Vol. I, pp. xix, 613; Vol. II, pp. 401. $8.75.)

This monumental study by the nestor and outstanding authority in the field of international law fulfills a two-fold purpose. First, it unfolds a full panorama of the leading contributions of jurisprudence to the development of legal, political, and international ideas from ancient times to the opening years of the seventeenth century. Secondly, it represents a reflection on and restatement of basic concepts of state and international order. For such a task—doubly necessary in a period of dynamic change and cynical relativism—the author is best qualified by a life-long distinguished career of scholastic achievements and practical contributions. His scientific works of half a century's endeavor fill shelves in libraries. Secretary of the Carnegie Endowment for International Peace since it was founded in 1910 and director of its Division of International Law, he has labored tirelessly in the cause of world peace and international understanding.

The first volume presents what Dr. Scott modestly calls a "historical commentary" on the leading political philosophers. In fact, it represents a well-rounded critical analysis of their contributions seen against the background of their philosophical tradition. This historical panorama opens with a description of the "Greek Background," studying specifically the contributions of ancient Greece, Socrates, Plato, Aristotle, and the Stoics. The second part deals with the "Roman Heritage," with special chapters on the law of Rome, Cicero, and Seneca. The third section shows the rich picture of "The Christian Heritage, Ancient and Medieval," with particular emphasis on St. Augustine, St. Thomas Aquinas, and Dante. The next part analyzes "The Transition from Mediaeval to Modern Thought," and studies the survival and influence of Roman law and jurisprudence, with a noteworthy *excursus* on the law of nature in the modern world. As leading thinkers of this period, Marsiglio of Padua, Machiavelli, Francisco de Vitoria, Bodin, Ayala, and Gentili are selected. The fifth part, in discussing "The Era of Reform," analyzes the contributions of Thomas More, Calvinism, Martin Luther, and Erasmus. The final part, taking up the work of Grotius, Bellarmine, Suarez, and Richard Hooker, leads to "The Beginning of the Modern Age." Rich quotations from orig-

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inal and secondary sources reflect the accumulated wisdom of life-long research.

The second volume assembles extracts from the works of outstanding thinkers in a systematic order under the main headings: "Jurisprudence," "The State," and "The Law of Nations." This "codification of the fundamentals of political science and jurisprudence represents the best thought of admitted masters in these fields during the period of some twenty centuries." This compendium of quotations, however, is somehow restricted by the basic preconceptions which run through the commentary itself. The masterful introduction to the whole work, dealing with basic concepts, brings out very well those premises. They could be summarized as follows: First, law is a sociological process in itself. Law grows out of human association and depends particularly for this reason on the establishment of some form of state. Second, the state is developed out of the social needs of "reasonable beings." To back up this concept, Scott very appropriately refers to Fichte's "The concept of law is a concept of a relation between rational beings"—a definition well to remember at a time when Fichte is made the intellectual forerunner of German National Socialism. Third, law is essentially permeated with moral conceptions, i.e., justice, equity, right, liberty. Fourth, law represents a historical notion. Man is a product of his past; so is the law of each age. Law retains, in the words of Tarde, the signs and residues of preceding phases of growth. Finally, the general character of law is emphasized. Human society is based on laws inherently general to all the spiritual kinship of human beings. Such a description of law most certainly limits the selection of conflicting aspects of modern law.

This is even more true of Scott's analysis of the character of the state. He radically rejects all doctrines of state personality as fictitious. The state is a humanized organization, a creation of human and therefore moral beings. The state exists *for* the people to supply human needs. The individuals do not renounce their rights, but the individual exercise of them. This automatically excludes, of course, the consideration, not only of all authoritarian thinkers in modern times, fascists and bolshevists alike, but it also leaves no room for the very complex analysis of some liberal thinkers, such as Friedrich Meinecke in his idea of "state reason" in which he refers to the dualistic character of the concepts of individual and state morality.

So far as international relations are concerned, the author sees no essential difference between the law of states in their relations with one another and within their own jurisdictions. Such an identification of national and international law leads to the logical conclusion that similar institutions can be introduced in international law and in national state organization.

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These clarifications in regard to the specific position of the author certainly should not minimize the lasting value of his comprehensive attempt. Certainly it would not be difficult to show that many actual conflicts in the international scene are not met by his analysis. Yet such an "unrealistic" picture may be especially refreshing in a world in which a war concept of politics seems to prevail and intelligentsia suffers from rational defeatism. Indeed, one may find much solace in such a restatement of great liberal faith. Yet it is at least as necessary to analyze the strength of the enemy's forces as it is to reaffirm one's own beliefs. As much as one will be impressed by the consensus of opinion, to be found in Dr. Scott's extracts, among successive writers in regard to basic principles, such a unity of thought is partly achieved by the omission of dissenting opinions. The commentary, it is true, discusses men such as Machiavelli whose aberration, according to the author, is "not in harmony with the normal development of law and political institutions," but "unhappily exerted considerable influence." It must also be regretted that, apart from the brief epilogue which takes up a few congenial thinkers of a later period, such as Locke, Burke, and Ruskin, the survey unfortunately stops at the opening years of the seventeenth century. One may only hope that Dr. Scott will continue his illuminating study and give a critical analysis of the political philosophy of the eighteenth and nineteenth centuries and a penetrating investigation of the current crisis in international thinking, thus crowning his monumental study.

In these most critical days of "law, the state, and the international community," it is most necessary to take stock of the cultural heritage and basic concepts by which we live. Dr. Scott's compendium will serve as a valuable guide up to the threshold of the modern age.

SIGMUND NEUMANN.

Wesleyan University.

Research in International Law: Judicial Assistance, Neutrality, and Aggression. Harvard Law School. (Washington: American Society of International Law. 1939. Pp. iv, 961. $5.00.)

This volume contains three more studies of the Harvard Research Group in International Law. Inasmuch as several other studies by this group have appeared and received wide recognition for their scholarly nature, it is unnecessary any longer to give space to a discussion of the group's method of presentation and organization, or to its purposes in pursuing such studies.

The first draft convention appearing in this volume deals with the problem of judicial assistance. In considering this not too well developed phase of international assistance and convenience, the group has confined its study to a field narrower than is sometimes comprehended by the

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term "judicial assistance." The draft convention is limited to a consideration of "service of documents and obtaining evidence for use in civil, criminal, and international proceedings, and information on the law of other states."

Part II of the volume is a draft convention on "The Rights and Duties of Neutral States in Naval and Aërial War." This is the most voluminous of the three, possibly because mechanical developments, particularly in aviation, along with the nature of aërial and naval activity of the past few years, have made this problem one of the least settled in fact, let alone in law. One is obliged to comment that the actual situation in the present conflict in Europe renders this draft convention for the present valueless. Moreover, events would seem to be moving along lines which will render the purposes and contents of the draft incomplete and unacceptable to states for a long time in the future.

The third draft convention deals with "Rights and Duties of States in Case of Aggression." "It is the purpose of this Draft Convention to define legal relationships between states in cases where a resort to armed force has been in violation of a legal obligation not to resort to such means and where such violation has been duly determined by a procedure to which the law-breaking state has previously agreed" (p. 825). In dealing with this subject-matter, the Research Group has departed from its more frequent procedure of attempting to state the existing law. Practically all states are bound by some kind of international commitment not to resort to war until some kind of peaceful method is tried for the settlement of the dispute. That these various commitments have exercised no real control is common knowledge. Therefore the group wisely eschewed any attempt "to decide whether or not the generality of conventional obligations of this type has already created any body of customary law regulating the legal relations of states when hostilities have resulted from a breach of such an obligation." This draft "frankly speaks *de lege ferenda*" (p. 824).

W. M. Gibson.
Duke University.

Evidence before International Tribunals. By Durward V. Sandifer. (Chicago: The Foundation Press, Inc. 1939. Pp. xii, 443. $10.00.)

This is a work of great value and of high merit. The preface indicates that it is the product of a study of "all available records, with a view to presenting a comprehensive statement of the rules relating to the production of evidence before international tribunals. . . . It is designed to serve as a practical guide for attorneys, governments, and tribunals in dealing with questions of evidence, and as an analytical and comparative treatise, and a basis of further study and investigation for students and scholars." The book successfully attains this rather ambitious goal.

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The text is clearly written and securely bolstered by citations to published and manuscript sources. Every student who desires to understand the pacific settlement of disputes by arbitral and judicial means will derive profit from Chapter I on the nature and sources of the rules of evidence and from the reasoned conclusions contained in Chapter X. Some indication of the scope of the treatise may be gained from the chapter titles: order and time of the submission of evidence, production of evidence, admission of evidence, documentary evidence, testimonial evidence, evidence subject to special rules of admission and evaluation, propositions not requiring proof, and rehearings and revision on the basis of newly discovered or fraudulent evidence.

The author finds it necessary to examine the rules of evidence in Anglo-American law and in civil law. He concludes that while the international rules are similar to civil law procedural rules, this is due less to a copying of such rules than to the fact that international tribunals rely primarily upon written documents. The author concludes that international tribunals have avoided the development of highly technical rules in the matter of evidence.

Appendices contain the texts of articles on procedure of the Permanent Court of Arbitration, the Central American Court of Justice, and the Permanent Court of International Justice. An elaborate bibliography of sources, treatises, and periodical literature and a full index complete the treatise.

CHESNEY HILL.

University of Missouri.

Von Weimar zu Hitler. BY OTTO BRAUN. (New York: Europa Verlag. 1940. Pp. 458.)

Otto Braun, Social-Democratic prime minister of Prussia from 1920 to 1933, contributes to the literature on the rise of dictatorship in Germany by an account of German, and especially Prussian, politics under the Weimar Republic. His motivation is not to defend his official policies, but rather to refute the oft-heard charge that Hitler's Germany is an expression of "Prussianism"; hence he emphasizes that the political practices of republican Prussia must be distinguished from monarchical Prussianism.

Prussia's as well as Germany's main task after 1918 was to convert a monarchically governed people and a monarchical administration into a republican people and a republican administrative machine. For reasons of her size and prestige, Prussia should have collaborated closely with the Reich in attaining that transformation. The best of intentions, however, were obstructed by structural faults. The frictions arising from a federal

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distribution of legislative and executive powers, together with a unitary allocation of fiscal authority, were aggravated by the instability of Reich policies due to frequent cabinet changes. Thus whenever the "Left" governing coalition of Prussia was faced by a "Right" coalition government on the other side of the *Wilhelmstrasse*, conflicts of policy were bound to arise, and the burden of the responsible cabinet heads was not lightened by the presence of members of one particular party in both cabinets. The continuous and often lengthy cabinet crises in the Reich would have caused even more serious damage than they did, Mr. Braun thinks, except for the stability of the Prussian cabinet and the consistency of its policies, which, the reader is made to feel, were largely due to the Prime Minister's energetic leadership (earning him the title of "Czar of Prussia" from his opponents).

In the end, however, Prussia's fate was decided by developments in the Reich. The increasing ineffectualness of legislative bodies due to the growth of anti-parliamentary parties deprived the Prussian coalition government of its parliamentary support in 1932, and the inability of the Communist-National Socialist majority in the Prussian Diet to elect a new prime minister ultimately led to intervention by the Reich on July 20, 1932, and to the unsuccessful attempt to settle a political dispute by judicial process. The establishment of a *Reichs-Statthalter* in 1933 merely repressed, but did not solve, the dualism between the Reich and the largest of the *Länder*.

The main reasons for the downfall of republican Germany, in Mr. Braun's opinion, are Versailles and Moscow, together with the failure of the German people to realize the responsibilities of democratic self-government, and the lack of leadership. On the latter point, Mr. Braun does not join those who put the blame for the rise of Hitlerism largely on Hindenburg, but rather credits the old general with having honestly tried to live up to his oath to uphold the constitution, and attributes the political mistakes and violations of the constitution covered by his signature to "unconscionable intrigants" whispering into the ear of the "unpolitical senile." The real guilt lies with the Reich Chancellors after 1925 for failing to assert the proper kind of political influence over the politically inexperienced old man and—in line with Streseman's warning—to keep irresponsible advisers away from him.

GERHARD KREBS.

Western Reserve University.

Parliament. By W. IVOR JENNINGS. (Cambridge: At the University Press; New York: The Macmillan Company. 1940. Pp. xiii, 548, $6.00.)

The House of Commons, 1832–1901; A Study of Its Economic and Functional Character. By J. A. THOMAS. (Cardiff: University of Wales Press Board; New York: Oxford University Press. 1939. Pp. 176. $2.50.)

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For a number of years, Dr. Jennings has been occupied with one of the most exhaustive studies of English government ever undertaken. In 1936, he published a weighty and pioneering work under the title of *Cabinet Government*. This year, he has brought out a companion volume, *Parliament*. Early in 1941 ("air raids," he says, "and paper supplies permitting"), he plans to add a volume entitled *The British Constitution*. And this is without taking account either of various earlier and briefer publications, such as *Parliamentary Reform* (1934), or of a treatise on the party system, not definitely promised in his latest preface, but at least hinted at—again subject, we may assume, to the hazards of war. In whatever condition English government may be left when the conflict with Hitler comes to an end, no one with Dr. Jennings' volumes at hand need ever be in doubt as to what it was, historically and structurally at all events, in these past seventy-five or a hundred years.

Of the two works which inescapably challenge comparison, *Cabinet Government* and *Parliament*, the former undoubtedly makes the greater contribution to knowledge. Parliament works more in the open and more in accordance with easily ascertainable rules. Far more has been written about it, including such major treatises as those of Redlich and May. In general, it is better known, and less of a subject for new and original comment. Dr. Jennings freely admits that the volume dealing with it was easier to prepare than its predecessor.

Both books suffer from certain limitations, which become more serious in the later one. Dr. Jennings displays immense learning in all that relates to historical developments, precedents, incidents, events, and what not. He has a familiarity with the machinery and processes of government which is truly extraordinary for one who has not himself been on the inside, even of Parliament, as a participant. His task, however, he has conceived as simply that of "description and analysis," and not that also of criticism. He tells us, indeed, that in both books he has tried to suppress his own views. In some situations, this is, of course, an entirely commendable procedure; and Dr. Jennings probably considers his books more objective and scholarly because of following it. Anyone, however, who has read the criticism of parliamentary organization and procedure set forth with such tantalizing brevity in his earlier *Parliamentary Reform* will recognize the fertility and interest of his ideas on the subject and will regret that a certain proportion of the somewhat antiquarian material which he presents in his latest book was not dispensed with in favor of the full and penetrating criticism of parliamentary operations and services of which the author is so easily capable. The very fact that so much of the ground traversed in the volume as it stands has already been ploughed might have been expected to make discussion on these more novel and refreshing lines especially inviting.

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This said, one returns to high praise of the volume as executed within the limits chosen. And it must not be inferred that there are not great stretches of the book in which genuine contributions are made. The interests represented by members of the House of Commons, the rôle of the Opposition, the use of questions, the management of a majority, the sources from which legislative proposals come, what actually happens to private members' bills, the consequences of the Parliament Act, the handling of provisional and special orders—these are only a few of the matters which no one will fail to comprehend more perfectly after reading Dr. Jennings' chapters.

The book is documented thoroughly throughout; some useful materials are presented in appendices; the index is unusually adequate; and although a few slips (chiefly printer's errors) have been noted, the volume is not only a monument of scholarship but a highly creditable specimen of the book-maker's art.

In one of his early chapters, Dr. Jennings devotes twenty pages to an analysis, with statistical tables, of the economic interests and affiliations of members of the House of Commons, concluding that while "the great majority if not all of the members of the House are honest hard-working legislators," in probably every case the national interest and the member's own personal interest are so inextricably and subtly intermingled that no member can fully and objectively distinguish between the two as motivations in voting. At the instigation of Professor Laski, J. A. Thomas, of the University College of North Wales, has studied the functional aspects of the House of Commons in the period 1832–1901, seeking to determine the degree of correlation between the country's economic development and the shifting functional balance in the House. Dividing his period into two stages—1832–65 and 1868–1901—he classifies the House membership of each political party following each general election, according to landed, industrial, financial, professional, and other interests represented, and then undertakes to see in what ways and to what extent the greater pieces of legislation down through the decades reflect these interests. It is hardly surprising that he finds the correlation close. The study is somewhat elementary, and the approach less novel than the author seems to suppose. The volume will, however, repay some attention from students of problems of representation.

FREDERIC A. OGG.

University of Wisconsin.

Japan's Emergence as a Modern State; Political and Economic Problems of the Meiji Period. By E. HERBERT NORMAN. (New York: International Secretariat, Institute of Pacific Relations. 1940. Pp. xvi, 254. $2.00.)

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This book is the eighth published study in the Inquiry Series of the Institute of Pacific Relations. The study is an attempt to analyze the factors in the Meiji period, from the collapse of feudalism to the consolidation of state power, which have conditioned the economic, political, and foreign policy of modern Japan. The book closes with the Russo-Japanese War, but the forces which are analyzed carry on, of course, into the twentieth century.

Chief among the conclusions of the author is the following: "To explain in the first instance the speed of transition from a feudal to a modern state, one must bear in mind the fortuitous concurrence of two processes: (1) the death agony of feudalism, and (2) the pressure exerted on Japan by the Western nations. The conjunction of the internal with the external crisis greatly hastened the change to a modern society. The rapidity of growth which characterized the next stage of development, namely, the advance from a nation of untried strength, still dependent on an agricultural economy, to a power of the first rank, was contingent upon the social and political nature of the Meiji settlement. The policy of the Meiji Government was to initiate strategic industries, to endow lavishly the defense forces, to subsidize generously a narrow and comparatively weak merchant-banking class in order to encourage its entry into the field of industry. The reverse side of this policy was marked by a disproportionately heavy tax burden on the agricultural classes, by the stinting of enterprises less vital than those connected with defense, and by a general impatience at any sign of unrest or democratic protest which might precipitate a domestic crisis and so hinder or retard the task of reconstruction. Nevertheless, it was this policy which succeeded in the very speedy creation of industries, a merchant marine, an overseas market, and an efficient navy."

Mr. Norman's conclusions rest on a wealth of evidence. The peculiar value of his work is found in the fact that this evidence is drawn, not from Western sources, but rather from a large variety of sources in the Japanese language which unfortunately are not available to students unskilled in Oriental languages. For economic and social backgrounds, the author draws heavily from the scholarly writings of Eijoro Honjo, Kuroita Katsumi, Takeo Ono, and Yosaburo Takekoshi. Again, he draws upon some of the great collections of original sources such as the Kikeitai Diaries, the *Meiji Bunka Zenshu* (Collection of Works on Meiji Culture), edited by Professor Yoshino in twenty-four volumes, and the *Meiji Zenki Zaisei Keizai Shiryo Shusei* (Collection of Historical Material on Finance and Economy in the Early Meiji Era), edited by Messrs Takao and Hyoi in twenty volumes.

In the field of constitutional development, he has depended largely upon the admirable studies of Judge Takeshi Osatake and Professor

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Jintaro Fujii, whose erudite works are almost unknown to American students. The book is thus a unique contribution to the Western literature on modern Japan.

In his admirable chapter on "Parties and Politics," the author shows how the movement of small landowners and peasants under the leadership of former samurai and great landlord merchants took form in the Jiyuto (Liberal party) in 1881, with a political philosophy that included not only free enterprise but also democratic institutions. Okuma's party, the Kaishinto (Reform party), composed of intellectuals and industrialists, like the Mitsubishi officials, aspired to a more conservative type of liberalism. Both parties fell into the trap set for them by the clan Government. After the forceable dissolution of the political parties, the radical elements of the Jiyuto drifted away from the original group, with the result that when the political parties reappeared in the new Diet of 1890 they possessed a marked similarity. But in view of the fact that political parties were soon to contend with the bureaucrats and the clans for a share of the government, this was less a defect than the author seems to imply. The volume has an excellent bibliography and a glossary of Japanese terms.

KENNETH COLEGROVE.

Northwestern University.

The Quest for Peace since the World War. BY WILLIAM E. RAPPARD. (Cambridge: Harvard University Press. 1940. Pp. xx, 516. $4.00.)

This book is an outgrowth and expansion of lectures delivered at Harvard, under the auspices of the Lowell Institute, in the spring of 1939. The purpose of both the lectures and the book was "to describe the birth, the growth, and the mournful destiny of the idea that lasting peace should result from the World War"; and Rappard says that he undertook this somewhat unpleasant task because it seemed to him that "to seek to understand how this idea [of lasting world peace] originated, how its authors and their successors sought to realize it, how and why they failed, was un undertaking both historically interesting and perhaps politically useful" (p. ix). No one is better equipped for a task such as this than the distinguished Swiss scholar, professor, and statesman, and he has produced a volume which ought to be on the shelf of every student of international affairs, and which ought to influence profoundly the course of our thought in the future, if there is to be any future for free thought.

Rappard begins by pointing out that everyone seeks peace, even Herr Hitler in his own peculiar way, but that there are several kinds of peace sought, depending on who does the seeking. To some, particularly the soldier and the occasional politician, peace is simply military victory or the cessation of fighting; to others, it is a state of lasting superiority of

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the victors; but to Rappard it means something far more ambitious and therefore, of course, more complex and intellectually more difficult. "It is peace defined as a state of international relations based on the legal organization of the world of nations, peace which is not merely the cessation of war as a result of the victory of the stronger, peace which is not merely the interruption of war assured temporarily by the superiority of one Power or group of Powers, but peace which is to the international community what order is to a national community: the result of certain habits, certain principles, certain institutions, certain procedures and sanctions, which are intended to prevent the outbreak of violence" (p. 9).

In dealing with the quest for peace so defined, Rappard covers the broad aspects of the problem in five chapters, dealing respectively with the evolution of the peace idea during the World War, its handling at the Peace Conference, and the post-War developments in respect to arbitration and other forms of peaceful settlement, collective security, and disarmament. In a sixth chapter, the author makes an admirable recapitulation of the entire problem, with some explanation for the failure of the quest in the past and some intimation as to the prospects for a happier quest in the future. These chapters are supported by detailed description and a mass of documentary quotation that are skillfully woven together into a fascinating narrative. There are enlightening discussions of particular events, institutions, and problems, such as the origins of the World War, the World Court, the Geneva Protocol, the Locarno Treaties, the Kellogg Pact, the Ethiopian dispute, Article 10, the Disarmament Conference, sanctions, aggression, etc. All of this is old stuff, but Rappard's presentation is timely and illuminating in its re-emphasis on the tremendous importance of it all to present-day events.

It is impossible, within the space allotted, to indicate Rappard's explanation of the course of events with respect to these various and complicated problems. The historians of the Harry Elmer Barnes school will not agree with his findings, especially on particular events, such as the origins of the war, the work of the Peace Conference, and disarmament, although they would do well to review the events and the evidence in the same methodical and unbiased manner. Putting it most summarily, Rappard seems to suggest that the quest for peace failed because the post-War statesmen did not carry out the intentions of the War statesmen in the building of a genuine international order. For this failure the guilt is pretty well distributed, but it may be highly important for us in the United States to recall particularly our own share, which Rappard sums up in the following neat paragraph: "It is something of a miracle that the Unites States should have gone to war late enough not to prevent the previous exposition by President Wilson of the philosophy of which the League of Nations was born, but still soon enough to secure the victory

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of the democratic Allies, which alone could assure its birth. And it surely is an extraordinary tragedy that the product of this American creative effort should have been sterilized by American action" (p. 57).

Whether we of the present generation can or will profit by the mistakes of the past remains to be seen. Rappard was none too hopeful about that, even at the time he wrote; and now, as this review is being written, the Nazi terms to defeated France are announced and the problem for the future becomes the more terrific. At the moment, the United States seems again aware of its own danger, if not of its responsibility. But even if we Americans and Europeans alike have at last learned the lesson of this book, it will now require courage, patience, and intelligence of an unusually high order to preserve liberty for ourselves and something like a decent international order for the world. One can only hope that this splendid volume will somehow prove even more "politically useful" than Rappard expected.

CLARENCE A. BERDAHL.

University of Illinois.

Contemporary International Politics. By WALTER R. SHARP AND GRAYSON L. KIRK. (New York: Farrar and Rinehart. 1940. Pp. xvii, 840. $4.00.)

Elements of International Relations. By FREDERICK A. MIDDLEBUSH AND CHESNEY HILL. (New York: McGraw-Hill Book Company. 1940. Pp. viii, 498. $3.25.)

Principles and Problems of International Relations. By H. ARTHUR STEINER. (New York: Harper and Brothers. 1940. Pp. xii, 835. $3.75.)

These three books come as an embarrassment of riches to the lecturer who is looking for a text to use in connection with an introductory course in the problems of international relations. All three are good. Each has its special claim.

American textbooks written to introduce the student to the field of international relations seem to fall into two distinct groups. Of these, one group, whose outstanding example is the brilliant work of Frederick L. Schuman, attempt to systematize the subject by relating all its aspects to a single unifying principle. The other group follow the older tradition exemplified in Raymond L. Buell's classic volume. These are content to present the problems of international relations with as much of an ordering as the ingenuity of their authors can devise, but without trying to force a symmetrical picture and an underlying unity. The approach of the latter group, which seems to the reviewer to be the more realistic, is the approach of all three of these new texts.

Space does not permit a detailed description of the contents of each of the three. Nor is such description necessary, since pretty much the

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same ground, the usual subject-matter for texts in international relations, is covered in all three. With somewhat varying emphasis and organization, each describes the contemporary world of states; gives a little of the historical background; devotes one or more chapters to nationalism, imperialism, trade and raw materials, armaments, diplomacy, the peaceful settlement of disputes, international organization, and related problems. Although for some reason the *Elements of International Relations* gives very little attention to armed conflict and war, these receive adequate treatment in the other two books. In addition, *Contemporary International Politics*, which is perhaps the most complete of the three texts, has excellent chapters on geography, population, and propaganda.

Contemporary International Politics, in spite of its name (which was the work of the publisher), is, like the other two, a general survey of the whole field and is not at all of merely contemporary application. The authors divided the material between them by chapters, but so closely did they work together and so carefully did each go over the work of the other that it is not possible to detect enough difference in style and presentation to say what chapters were written by the same man. This is the more remarkable as the smoothness of the style lifts the book well above the average level for college texts.

It is only with reluctance that criticism can be voiced of a book whose style, whose scholarly presentation, whose illustrative material, is of the high order found in *Contemporary International Politics*. Yet, if there is little for the expert to find fault with, the teacher has certain grounds for complaint. Surely, an introductory textbook, which must point the way to the literature no less than to the elements of a given discipline, should supplement even a liberal use of footnotes with something more than a "bibliographical note." That is one point. A second is the need for marginal or paragraph headings. So great is the wealth of material presented in each chapter that it would be of no small aid to the student if he had been provided with more pointers than four or five sub-titles to a chapter.

These criticisms, however, cannot be very prominent in the mind of the student. The reviewer has never known a text to be received with the enthusiasm this one evoked from his students after it was introduced last spring.

But in one respect both *Contemporary International Politics* and *Principles and Problems of International Relations* deserve, in the opinion of this reviewer at least, a stronger stricture. Although, explicitly in the first case (p. vi.), implicitly in the second, they set out to analyze the international scene by a functional interpretation of the many elements involved, the last two hundred pages of each would seem to belong more properly in a modern history textbook. Admittedly, this very feature will prove a boon where courses in recent history are not offered. Never-

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theless, a good case can be made for the political scientist's "sticking to his last."

The *Principles and Problems of International Relations* and the *Elements of International Relations* share two virtues which have been noted as lacking in *Contemporary International Politics*. In both books, the chapters are broken down into sections and sub-sections and paragraphs, with the subject-matter so clearly labeled that even the slowest student will easily follow the argument. In both books, too, selective bibliographies for purposes of collateral reading are provided at the end of each chapter. This is especially good in Middlebush and Hill. But with respect to maps and graphic material, the two texts do not make the showing they might.

The *Elements of International Relations* may perhaps find its greatest vogue in the junior college. It is lucid. It is concise. Indeed, in many places it reads almost like a very complete syllabus. Its few tables will not burden the student with indigestible figures. Above all, it has a painless introduction to definitions and distinctions which is the best and the clearest of any text the reviewer knows.

In the field of international relations, it is probably truly said, the best textbook for any man is the one he writes himself. But for second place, each of the three here reviewed must be regarded as a stout contender.

JAMES T. WATKINS.

University of Chicago.

The State in Society; A Series of Public Lectures Delivered under the Auspices of McGill University, January 23, 1939–February 10, 1939. BY ROBERT WARREN, LEO WOLMAN, HENRY CLAY, AND LORD TWEEDSMUIR. (Toronto: Oxford University Press. 1940. Pp. 140. $1.50.)

It is reassuring to note, in perusing the three lectures of Professor Warren and those of Mr. Henry Clay, that generalization is not yet a "lost art." Professor Warren's observations concerning the social structure, the changes which it is undergoing, and the relation between the state and business organization are always brilliant and usually incisive. Space permits the presentation of only the barest outline of his lectures.

The social structure, he says, manifests itself in an interrelation of four elements: the family, the church, the economy, and the state. Whereas these factors were "merged and blended" in the Middle Age, the social structure of the nineteenth century was "compartmented," "individualized," and was characterized by the dominant position of the business organization. Since 1914, because of post-war pressures and because the business organization is not performing its social and economic functions, the prevailing trend has been in the direction of state dominance.

In deriving the philosophical background of the social structure of the

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nineteenth century primarily from Rousseau, Mr. Warren seems to overlook Locke and to ignore the fact that only some of Rousseau's doctrines had democratic and individualistic implications, and that his antirationalism and collectivism are better suited to serve as philosophical foundations of fascism.

Professor Wolman's lectures about the nature of unemployment, labor relations since the World War, and a type of employer-employee relationship which he dignifies by calling it "industrial democracy" are, on the whole, confined within the limited perspective of the specialist. They are a good example not only of academic particularism, but also—presumably because of Mr. Wolman's former association with the Amalgamated Clothing Workers—of the preoccupation of the trade union movement with intra-industrial relations. For good or ill, the failure to appreciate fully the broader political ramifications of the problem of industrial relations has, in this reviewer's opinion, been responsible for the relative ineffectualness of the labor movement in political crises. In the first lecture, Mr. Wolman reports some interesting data about the diverse methods of dealing with the unemployment problem and of presenting unemployment statistics.

Mr. Henry Clay, economic adviser of the Bank of England, makes some sound observations about the nature and rôle of nationalism. Within the liberal-democratic state, he says, it has served as an element of political cohesion conducing to internal stability. Now, however, nationalism is so exaggerated as to constitute a danger to personal liberty. Moreover, the nation-state no longer encompasses within its frontiers all of man's interests, and nationalism, because of its very nature, cannot constructively solve international problems. Mr. Clay hints, therefore, that the national state is not the final solution of the problem of community organization. In this connection it is significant to note that he does not consider national self-government and representative self-government to be synonymous and interdependent. Nor does he, as historians are wont to do, invert an historical sequence by construing the so-called nation-state as a by-product of the nation. Historically, the realm came first, nationhood developed afterwards.

On only one major point does this reviewer feel impelled to take issue with Mr. Clay. Mr. Clay errs, in his opinion, in identifying the new *étatism* too closely with the nation-state. The political cleavage, one side of which it represents, transcends national frontiers.

In the closing address, Lord Tweedsmuir, late governor-general of Canada, warns against excessive compartmentalization of the branches of thought.

HENRY JANZEN.

Hamilton College.

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Positive Democracy. By James Feibleman. (Chapel Hill: University of North Carolina Press. 1940. Pp. xv, 249. $2.50.)

We Must Be Free: Reflections of a Democrat. By Leslie Roberts. (Toronto: The Macmillan Company of Canada. 1939. Pp. xx, 248.)

These volumes constitute two more prescriptions for the "saving" of democracy. Mr. Feibleman would throw overboard what he calls the "negative" democratic theory of the past, which was directed against interference by government, and erect in its stead a scheme which will exalt the "positive" values of a genuinely democratic system. Such an adumbration would involve the divorce of democratic ideas from nominalism, to which they were so unfortunately wedded early in their modern career. Society is more than an aggregation of individuals, and unless realism is injected into democratic philosophy, it is doomed to defeat. A positive theory must maintain the desirability of rule by the majority, but must affirm that that authority should be exercised only in accordance with reason, lest it cease to be majority rule and become governance by the mob. It must, moreover, realize that the encouragement of science is the chief method by which a democratic society can ensure its own preservation—a suppression of the quest for value is a denial of the very genius characteristic both of science and of political systems antithetic to autocracy. This is perhaps the core of Mr. Feibleman's thesis: democracy as he defines it is to be preferred to all other schemes primarily because it is "nearest to the ideal of science" (p. 123)—and science is defined as the endeavor to penetrate the veil which separates the world of appearance from the eternal ideal universe. In political terms, "scientific democracy" is "the susceptibility of all codes to revision" (p. 124); law being an ever-changing hypothesis as to what public relations of men ought to be. Ideal democracy is afflicted with neither the dogmatism of communism nor the irrationalism of fascism, and thus becomes the only political system providing opportunity for speculation and experimentation, which, in combination, spell science.

Finally, any adequate conception must adopt a functional theory of property and proclaim in no uncertain terms the place of social goals in a complete political theory. The ends of social life are determined when it is realized that the self, defined as a set of relationships with everything else, can serve its interest in security only by identifying that interest ultimately with an unlimited community. To stop short of this identification, to take refuge in a narrow limited society in time of social chaos, is in the end to "adjust" oneself to what is perishable, and hence to obliterate the very end which was originally sought. Science endeavors so achieve this community; and religion likewise seeks it—in the soul's aspirations for God.

Space-limits forbid an adequate criticism of this thesis, but the author's

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constant emphasis on the crying need for speculative effort should be commended heartily. To an academic world—including, notoriously, traditional "political science"—enslaved so frequently by what is exalted as the "practical" and "pragmatic," these are wise words: "We must develop our respect for and capacity to indulge in theoretical speculation of the utmost abstraction. For it is this kind of speculation, governed by reference to fact, which eventually leads to the greatest practicality" (p. 207).

Mr. Roberts, a Canadian journalist, would "save" democracy externally by defeating the Hunnish Germans and internally by ensuring the maintenance of civil liberty and the solution of the economic problem. The present conflict in Europe is, he avers, "civilization's war" (p. xvi.); and the United States should join Canada and Great Britain in waging it for the preservation of "decency." But the democrat must also understand certain aspects of Canadian public life which, according to the author, impede the development of harmony and liberty. Among these are Quebec's "padlock law," the peculiar French-Canadian psychology, the equally curious "English-Canadian" mind, and persistent unemployment —all of which are examined briefly. Mr. Roberts fails to tell us how we can wage war for democracy without destroying it in the process—indeed, the problem seems never to have occurred to him.

MULFORD Q. SIBLEY.

University of Illinois.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

The Committee on Public Administration of the Social Science Research Council has for a number of years been engaged in pushing out the frontiers and exploring the "twilight zones" of administrative management in the American governmental scene. Mr. Leon Thomas David's *Tort Liability of Public Officers* (Chicago: Public Administration Service, pp. 93) is the result of one of the Committee's numerous programs of stimulation. Readers will have to be careful not to be misled by the uninteresting and stereotyped titling of this study; it is emphatically not just another tort liability analysis of the type upon which law review staffs have been cutting their teeth for the past several decades. In the first place, it is a practical investigation by the assistant city attorney of the city of Los Angeles of the liability in tort of public officers, rather than governmental jurisdictions. In the second place, the writer is thoroughly aware of the relation of responsibility in tort to the process of administrative management. Finally, it is made clear that the only substantial safeguard which the citizen can hope for is the legitimate extension of tort liability to the

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governmental agencies themselves. While the study is directed primarily to the statutes and decisions governing the tort liability of public officers in California, its application is general. The larger trends of statutory waiver of governmental immunity, the protection of the superior against the torts of his subordinates under the doctrine of "servants of the law," the extension of statutory bond requirements in the protection of the public interests and the rights of the citizens—all these devices, mechanisms, and improvisations are encountered throughout the United States and at all levels of governmental action. As Mr. David rightly points out, "risks often must be consciously evaluated and only those deemed most dangerous are guarded against or remedied. Sometimes the risk deemed slight turns out to have been in fact great. The officer should not be criticized for error in his attempt to determine probabilities. If the public cannot provide funds to take care of such conditions, the least it can do is to provide them retrospectively, and as a matter of municipal finance such a policy has proved sound in some of our larger cities." The Committee on Public Administration and Mr. David have served well in opening up this vital problem of management in a more practical way than it has hitherto been treated. The future development of this project for the study of the responsibility of officials and governments in tort, which is designed to reveal the actual methods of governments in remedying the wrongs which they commit, will be followed with much interest by students of public law and of administration throughout the country.—ROWLAND EGGER.

In 1932, the Virginia legislature made optional forms of county government available to the counties of that state, constitutional clearance having been obtained by the adoption of an amendment in 1928. Only two counties have taken advantage of the enabling legislation and streamlined their governmental structure. A full and impartial appraisal of the results in one of these counties has been made by Edward Overman in *Manager Government in Albemarle County, Virginia* (Bureau of Public Administration, University of Virginia, pp. 163, mimeographed). The study gives a complete picture of the adoption and the first six years of the operation of the county executive form of government in Albemarle county. It is the story of the achievement of responsible local self-government, lower tax rates, and at the same time an expansion of public services. The study is very much enriched by including the story of the campaign over the adoption of the new form of government. Here the author gives names, quotes from campaign speeches, and lays bare the strategy and, as far as possible, the motives of the opposing sides. It is an interesting study in county politics and campaign strategy. The account of administrative reorganization is related department by department—finance, education, public welfare, public health, and law enforcement. The

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way in which each meshes into the over-all management is emphasized. Space does not permit a review of achievements, but two comparative figures are indicative. During the last three years under the old régime, the cost of the finance offices of the county averaged $21,395 annually; during the first three years under the new régime, the average annual cost was $8,431. Formerly, the county clerk retained the fees of his office and received an appropriation of $1,500 toward expenses; now that the clerk has been put on salary, the office is returning a profit to the county which for the last two years has averaged $947. It is gratifying to know that Mr. Overman is now working on a similar study of the operation of the county manager type of government in Henrico county. These "case histories" should help lift the question of the applicability of the managerial plan out of the field of speculation.—PAUL W. WAGER.

In *State Supervision of Local Budgeting* (National Municipal League, pp. 131), Dr. Wylie Kilpatrick presents an able argument for recasting budgeting procedure as a means of strengthening state supervision of local finance. His thesis is supported by bad fiscal conditions existing in many municipalities and counties. Municipal deficits cannot be attributed entirely to the depression, because cities, as shown in Dr. Kilpatrick's test cases, have had recurring deficits that antedate the business disturbance. In many instances, faulty budgeting is the reason for local deficits. One of the first needs, therefore, is a balanced budget. Any argument for cyclical budgeting in the national government does not apply to local governments. The local fiscal situation demands also an overhauling of budget procedures and state supervisory processes. Statutory tax and debt limits, mandatory budgets, and post audits have been largely negative in nature. It is true that state responsibility must be met by some attention to setting statutory standards for local fiscal procedures. But if the statutory standards are to be effective, there must follow state administrative supervision that is more than police in nature—one that assists the localities in meeting the higher standards of administration. The state must also be ready to intervene directly if the locality defaults. Dr. Kilpatrick very ably discusses the criteria determining this drastic action. Statutory standards implemented by administrative supervision require also institutional devices. At this point it is just as important for one to begin with the locality. If one should ask the effect of a strengthened state supervision on the traditional concept of local self-government, Dr. Kilpatrick replies that budgeting control is a tool of democracy, and that state intervention may be needed to prevent its being blunted by the ineptitude of locally elected officers. In a passage of this excellent monograph that the layman would appreciate, Dr. Kilpatrick summarizes as follows: "The state's procedural regulations constitute the road pavement on which lo-

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cal financial traffic flows; the records, reports, and surveys will form a lighting system to examine and illumine local operations; the budget review and state control of extraordinary cases in event of a local breakdown will act as an electric power conductor; and the audits and investigations will serve to drain away the waste and pollution of mismanagement."—JAMES E. PATE.

The history, organization, functioning, and regulation of the various types of transportation agencies are surveyed and analyzed in Kent T. Healy's *The Economics of Transportation in America* (Ronald Press Co., pp. vi, 575, $4.00). That about two-thirds of the book should be devoted to a discussion of conditions and problems found in the railroad field is not unnatural, because the railroad is still the principal means of commercial transportation; furthermore, practically all of the pricing and regulatory policies applied in the field of transportation have been developed in connection with governmental control and supervision of the railroad industry. Professor Healy's treatise is of especial interest to the student of transportation problems because he is not content with a description of transportation types and agencies and the extent of their operations, but attempts to uncover and appraise the underlying causes and motives in connection with the functioning of these services. The chapters dealing with the cost and the pricing of transportation are especially significant. The cost structure of railroad transportation is studied in great detail because more comprehensive data are available than in the other transportation fields. It is the contention of the author that "with a greater proportion of transportation service than ever before being produced under competitive conditions, rate theory will give more emphasis to principles which take competition into account." He is of the opinion that the cost-of-service concept or principle of rate-making should receive greater emphasis: that fixed costs are not nearly as important in rate-making as the older railroad men believed them to be. The discussion of railroad finances, consolidation, reorganization, and government ownership is of interest because of the references to special situations. Professor Healy believes that much of the government ownership talk heard in recent times is the "response of defeatists." In defense of the Interstate Commerce Commission, he says that the Commission has not used its powers to restrict any reasonable acts of management. A valuable feature is the list in the appendix of railroad corporate histories found in the volumes of the Interstate Commerce Commission; figures and maps illustrating the railroad rate structure are also most helpful.—HENRY R. TRUMBOWER.

Students of municipal government and administration will find comparatively little new material in Weldon Cooper's *Municipal Government and Administration in Alabama* (Bureau of Public Administration, Uni-

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versity of Alabama, pp. lx, 252). However, studies of this kind are valuable as contributing to the study of local government in the particular state and to the general field of municipal government. Small municipalities have been neglected, and there is a real need for studies of this kind in other states. It is important when one considers that, even in a "rural" state, "more than one million Alabamans live today in incorporated cities and towns." Small municipalities need all the help they can get; for, as the author says, "truly a full-time employee in the small towns must be a jack-of-all-trades." The reader might welcome a chart or two in the chapter on administrative organization and a little more discussion of the interesting and unusual features of Alabama municipal government. Most of the book is an explanation of structure and working, with little attempt to appraise results. Some features of the Alabama situation will be interesting to students outside the state. The jurisdiction and selection of the Jefferson County Personnel Board and the Mobile County Personnel Board are unique. An Alabama statute prohibits cities from engaging in "public health programs." With one exception, cities have not created "welfare departments." Cities do, however, in many cases contribute to such activities. Boards of education are appointed by the city councils.—KENNETH P. VINSEL.

Mr. Frank A. Neff's *Municipal Finance* (Wichita: McGuin Publishing Co., pp. xii, 330, $3.50) is largely descriptive, historical, and factual. The book has not been written primarily for administrators, nor is it a statement of fundamental principles. Because of the nature of its contents, it is definitely "dated." There are seven chapters, dealing with introductory material, municipal expenditures, municipal revenues, municipal indebtedness, finance administration, foreign cities, and summary and conclusions. The author feels that the problems of municipal finance became more acute about the beginning of the twentieth century and that the problems of expenditures, revenues, and debt are largely conditioned by the changing society and the changing demands on municipal government. The book shows the result of extensive reading in the field of municipal and public finance, and the bibliography is quite complete. In spite of the fact that it is largely a digest of existing material rather than a contribution of new thoughts, the volume seems fresh and stimulating—CARL H. CHATTERS.

The *Manual on the Use of State Publications* (American Library Association, pp. x, 342, $6.00), edited by Jerome K. Wilcox and sponsored by the Committee on Public Documents of the American Library Association, is the first comprehensive contribution on this subject since 1915. Part I contains five chapters on "The Importance, Character, and Use" of

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present state publications. Part II has four chapters on "Bibliographical Aids." Part III has nine chapters on "Basic State Publications," treating each important group of state documents bibliographically and critically. Part IV is a directory of sixty-nine different national associations of state officers, indicating their chief publications. Part V has a chapter on state printing and one on the exchange and distribution of state publications. Each of the twenty-one chapters was written by a specialist. In general, explanatory remarks are followed by tables and other compilations. The publications are classified both by functions and by states. Since state agencies may change even while the data are being collected and classified, this kind of a book cannot be entirely up to date. The editor invites corrections. Nevertheless, timeliness is indicated by listing publications on such new activities as state housing and unemployment compensation. The *Manual* will be especially valuable to political scientists who are interested in research in present-day problems of state administration and to librarians who handle state documents.—WILLIAM L. BRADSHAW.

For the thousands of officials, citizens, and teachers who have learned through usage that they can depend upon it for an authoritative résumé of what's what in city government, perhaps the simplest and best way to appraise Volume 7 in the series is to say that *The Municipal Yearbook—1940* (Chicago: International City Managers' Association, pp. 629, $5.00) will supply everything they have a right to expect—and several new features in addition. Insight garnered from experience and receptiveness to new ideas has again enabled the happy editorial partnership of Clarence E. Ridley and Orin F. Nolting to mold the contributions of some thirty-two experts and forty-eight state correspondents into a masterful reference work. Organized in five big sections (Governmental Units, Personnel, Finance, Activities, and Directories), well indexed, and with all materials relating to one function now grouped together, the *Yearbook* tells the story and describes the status of the American city of 1939 in comprehensive fashion. Its very publication marks an encouraging sign on the horizon of urban government, for the painstaking collaboration required from hundreds of persons all over the country to gather such a store of facts and ideas shows that the building of a widespread determination to improve the municipal institutions of the nation is well under way. Happily it has been possible to increase the coverage of regular functions while again according substantial consideration to education, library service, county management, and the administration of justice—often, and mistakenly, regarded as outside the municipal picture.—JOHN A. VIEG.

Jacob Tanger and Harold F. Alderfer have completely revised their successful and useful text, *Pennsylvania Government, State and Local* (Penn-

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sylvania Book Service, pp. 467). The volume will prove most valuable to students of state government who desire a specialized treatment of the particular variety of governmental organization under which Pennsylvania operates. Broad descriptive treatments of the Pennsylvania local and state governments are few. A Legislative Committee on State Finances issued an able summary in 1934 titled *A Survey of the Government of Pennsylvania.* This study is now outdated and the Tanger and Alderfer revision is a most welcome addition. The opening chapters deal with nominations and elections, constitutional development, the General Assembly, the governor, state administrative structure, and the court system. Three chapters describe the rather complicated local government organizations. Closing chapters treat, on a functional basis, selected activities of the state such as the administration of justice, education, natural resources, agriculture, highways, and the regulation of business. The inclusion of the full text of the Pennsylvania constitution as amended to 1939 in an appendix supplies a useful reference tool. The extensive practical experience of the authors in Pennsylvania state and local government greatly enriches the descriptive material.—CHARLES C. ROHLFING.

An Atlas of Taxing Units is the first volume of the "Survey of Local Finance in Illinois," prepared by the Illinois Tax Commission in coöperation with the W.P.A. in 1939. Its basic aim is to make clear the existing tax unit map of Illinois, which possesses 15,100 such districts, more than any other state, even when special assessment districts are not counted. There is a general historical survey of the development of the districts, an account of the legal organization of each type of district, and numerous tables and maps. The bulk of the volume is devoted to full-page maps showing all of the taxing district boundaries by counties, which should be extremely valuable. The entire production represents a type of basic research indispensable to the planning of local government in the United States. *Illinois Tax Problems; Proceedings of an Open Forum on Taxation and Tax Problems in Illinois, December 13–15, 1939,* is Special Report No. 5 of the Illinois Tax Commission. It is the record of papers and discussions by qualified persons on "Keeping Up with Government Costs," "Citizens' Organizations and Government," "Financing Urban Government Today," "Major Expenditure Problems in Illinois," "The Property Tax and Its Improvement," "Delinquency and Tax Collection Problems," "Tax Reform and Related Improvements Needed in Illinois," "Injustice through Inheritance Taxation," and "Needed Improvements in Tax Laws." The volume is a convenient summary of informed opinion on the complex matters treated.—LLEWELLYN PFANKUCHEN.

The political faith of South Carolina from the ratification of the Constitution through the War of 1812 was predominantly Jeffersonian. Such

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is the thesis of John Harold Wolfe's *Jeffersonian Democracy in South Carolina* (University of North Carolina Press, pp. xi, 308, cloth $2.50, paper $1.25). A painstaking analysis of the activities of the state legislature during the period under discussion, and of the votes of the South Carolina representatives in Congress, points to the conclusion that on a majority of the questions at issue between the Republican and Federalist parties the state sided with the Jeffersonians. The division of opinion was sometimes close, but in spite of the occasional vacillation and opportunism of a few ambitious individuals, the political influence of Federalism in the state as a whole steadily declined. Professor Wolfe minimizes the political differences of the low country and the Piedmont. Although representation was weighted in favor of the coastal region, which was dominated by a propertied class, the interest of both sections lay basically in agricultural prosperity. As long as the Jeffersonian movement remained agrarian, therefore, South Carolina could be, and was, Jeffersonian. The book is a thorough and scholarly study, which throws new light on South Carolina politics of the Jackson era as well as on the party battles of the earlier period with which it is specifically concerned.—CHARLES M. WILTSE.

State Tax Administration (Bureau of Government, University of Michigan, pp. 18) is a survey of tax administration in Michigan. The pamphlet describes the highly decentralized character of the tax administering process, and analyzes proposals for reorganization. A brief account of the reorganization of tax agencies in other commonwealths adds to the pamphlet's interest. It's chief value, however, lies in the summary account of the problem in a particular state.—JAMES E. PATE.

FOREIGN GOVERNMENT AND POLITICS

The Privy Councillors in the House of Commons: 1604–1629 (University of Minnesota Press, pp. xi, 332, $6.00), by David Harris Willson, is a detailed study of political management in the period from the death of Elizabeth to the dissolution of Parliament by Charles I in 1629. In it Professor Willson illustrates and justifies the prevailing tendency to push back the date of origin of modern political institutions. He centers his study on the privy councillor (the equivalent of the modern minister) as the mediator between king and Parliament. But he deals also with the modernization of procedure, the granting of subsidies, and the origin of parties. The reign of James I is seen to be the period in which the House of Commons first assumed the position of supreme arena of conflict between all the political forces both at court and in the country. The Tudors, who were despots, had found it convenient to let the House of Commons increase in prestige and power, but controlled it by placing in it a sufficient

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number of capable privy councillors who kept it subservient to the sovereign's will. James I and Charles I failed to manage the Commons because they chose inferior councillors, got too few of them into the House, and presented them with policies too difficult to defend. Mr. Willson gives a detailed account of how councillors were got into the Commons, of how the council prepared business for the Commons, of Salisbury and Buckingham as political managers, of the problems of subsidies, and finally of the way in which the old system broke down with the result that opposition leaders, rather than the king's ministers, led the House. Though Mr. Willson's elaborate analysis is hardly to be followed in detail except by those familiar with the month by month history of the years it covers, even those who lack this knowledge will be fascinated and instructed by his picture of parliamentary management.—E. P. CHASE.

In *The Real Rulers of Germany* (Trans. by Charles Ashleigh; London: Lawrence and Wishart Ltd., pp. 231, 3s. 6d.), Hans Behrend makes no pretense of masking his point of view. He is a Communist writing in the spring of 1939. He maintains that the rulers of Germany are the leaders of heavy industries—Siemens, Krupp, Thyssen, Kirdoff, etc., who put Hitler into power so that they could grind down the wages of the worker and at the same time launch Germany on a policy of expansion for the benefit of profits. The Junkers played along, but were less significant. How the profits of the "Finance Capitalists" have increased, and how they have built up their empires through interlocking directorates, is the main theme of the book. Many smaller capitalists as well as the Jewish concerns went to feed the insatiable appetite of these modern molochs. Thus the key to the problem which Hitler presents the world is to be found in the German munitions ring. Similarly, Behrend over-simplifies the Morocco crisis of 1905, saying it "was caused solely by the fact that Herr Krupp considered that the Sultan had ignored him when placing his orders for arms." While many facts can be gleaned from such an extreme leftist interpretation, no complete picture is obtainable. For example, figures are cited to show how much more coal is now sweated out of a German worker (p.133), and only in a quite different context is this increased production attributed, at least in part, to new capital investments (p. 194). German labor is hard pressed, but Behrend does not bother to give his opinion on *Kraft durch Freude*, or, for that matter, on the elimination of unemployment. The advantages that the "real rulers" have obtained are dilated upon, but the taxes, contributions, and restrictions placed upon them are hardly mentioned. No footnotes are presented to substantiate the many sensational statements. Behrend correctly prophesied a future war, but the German-Russian pact and Thyssen's exile are decidedly out of line with his general argument.—E. C. HELMREICH.

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The material and spiritual aims of democracy are summed up as *Bread and Power* in a book of that title by E. T. Brown (London: Hodge, pp. 278, 10s. 6d.). This is "crisis literature" dealing with the paralysis of will that has afflicted our great democracies. Its objective seems to be social democracy; but it is almost exclusively concerned with the machinery of politics. Its two *bêtes noires* are the House of Lords and the privately-owned press. Its remedy for the defects of democracy is more democracy. It shows no knowledge of American studies of the relationship between politics and administration. It repeats classical phrases about the will of the people, without analyzing this concept into a mosaic of divergent group interests. And it nowhere glimpses the improbability of its own problem of bread and power being solved in a world of sovereign nation-states; for it is arguable that the tragedy of Britain is that the labor problem has distracted conservative attention away from national preparedness, while the international problem has diverted the attention of organized labor away from such internal reform as is here discussed.—WILLIAM HARDY WICKWAR.

John Graham's *Housing in Scandinavia* (University of North Carolina Press, pp. 238, $2.50) supplies pre-Blitzkrieg information on both general policies and specific programs of housing in Denmark, Finland, Norway, and Sweden. Of special interest to students of public administration is his discussion of land planning, and particularly of extensive public ownership of land in metropolitan areas, as essential to a program of public and/or various forms of semi-public and private housing. Mr. Graham's discussion of the reëstablishment of the small farmer on his own land through systems of state aid and coöperatives should be both encouraging and instructive for this country, where we are just learning that the rural housing problem cannot be attacked separately from the problems of land conservation, land tenure, and the industrialization of agriculture. Although the value of the book for reference purposes is somewhat lessened by the unusual mixture of anecdotes and statistics and by the treatment of statistics in a literary rather than in a more orderly form, the volume is probably the best American-written record and evaluation of housing improvement in four democracies working for the welfare of their people in the shadow or darkness of dictatorships.—EDMOND H. HOBEN.

INTERNATIONAL LAW AND RELATIONS

The research experts of the Foreign Policy Association enjoy to a unique degree the ability to present the complex problems of political geography and international affairs in a simple and popular form. The *Handbook of the War* (Houghton Mifflin Co., pp. 248, $2.00), by John C. de

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Wilde, David H. Popper, and Eunice Clark, is certainly no exception to this rule. It offers in a remarkably clear-cut and objective way all the essential military, strategic, economic, and geographical information necessary for understanding the war in Europe. And the interest of the text is enhanced by many well selected maps and pictorial charts. The book should prove of great value to the student, the arm-chair strategist, and even, as a source of quick reference, to the expert. Many teachers should find it useful as a supplementary textbook in international relations courses. The *Handbook* begins with a chapter entitled "What They Are Fighting For," which describes with unusual brevity and clarity the link between the Versailles settlement and the present situation. The remainder of the book, except for two final chapters, is devoted to land warfare, air and sea power, and the economics of the war. Perhaps the most interesting chapters on land warfare are those entitled "The War of Attrition" and "The War of Annihilation." These chapters emphasize the changes that have taken place in methods of warfare which have made possible the modern Blitzkrieg campaigns. The four chapters on the economics of war are also of special interest—explaining the present war potential of the Great Powers as well as the economic changes that may come about by the changing fortunes of war. The two final chapters discuss the techniques of war-time propaganda, the peculiar dangers faced by the United States from this direction, and finally the problem of American defense. Written after the Polish Blitzkrieg, but before the rapid German advance into the Low Countries and France, the *Handbook* unquestionably overestimates the importance of fixed fortifications in modern warfare. But even here the authors were not as badly fooled as many other experts, and this over-emphasis, the only serious error in the book, can be automatically adjusted by the reader's knowledge of current developments. Altogether, the book is the best thing of its kind now in existence.—WINCHESTER H. HEICHER.

The struggle between major European Powers has been turned so swiftly and completely into a sheer battle for existence that problems of conflicting colonial claims seem at the moment incidental if not actually trivial. Here are two books which remind us of this hardy perennial of international politics. The first, L. S. Amery, *The German Colonial Claim* (Longmans, Green and Co. pp. 199, $2.50), is an examination by a prominent Conservative member of Parliament of the case—moral, economic, and political—for Germany's demand for the return of her former colonies. The verdict is so confidently conclusive that it will discourage all those who have hoped that a readjustment of international claims might be possible by methods other than war. " . . . there is no case which can be regarded, on closer examination, as justifying the German demand for col-

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onial retrocession, and, on the other hand, an overwhelmingly strong case, firstly, on the ground of moral responsibility for the native populations concerned, and, secondly, on the grounds of our own safety and existence as an Empire, against any concession to that demand. To the demand for territorial surrender voiced by the present rulers of Germany, there can, in honour and safety, be no other reply than an unqualified and uncompromising negative." The author offers the alternative solution that economic coöperation be encouraged through the waiver of "most favored nation" privileges, a suggestion hardly appropriate to the present temper of allegedly aggrieved nations. The second book, *Les Empires Coloniaux* (Paris: Presses Universitaires de France, pp. 219), is a compilation of lectures by prominent French and British students of imperial problems. M. Albert Charton discusses the former German colonies and African problems; Sir Alfred Zimmern reviews British colonial power; M. Perretti de la Rocca contrasts older and more recent empires; while M. Henri Coursier analyzes French colonial possessions. The lectures are learned and dignified, but recent as the book is, it is not sufficiently recent to be suffused with a sense of the current precariousness of colonial titles.—HAROLD W. STOKE.

It is rather a pity that Theodore I. Geshkoff's *Balkan Union* (Columbia University Press, pp. xvi, 345, $3.00) appears to be another typical product of the "wishful thinking" of a very noisy, determined, well organized, and well financed cluster of our "internationalists" who, in order to nourish their intellectual vanity that they have ready-made and easy "solutions" for the world's ills, have been glorifying any slight indication of their delusion that the world is getting smaller and hence all nations are arriving at a better understanding of their neighbors. Their idealism, though most sincere, has prevented them from realizing that the willful fragments of humanity which make up the nations of the earth are in point of fact universally engaged in deliberately turning their backs, not merely on political internationalism, which is not yet more than a fiction, but on their economic interdependence, which is an ignored reality. Since Geshkoff concludes that the Balkan conferences "have contributed a great deal to the establishment of comparative peace in the Balkans at a moment when other parts of the world have been plunged into the most destructive warfare," he gives the impression of overestimating the Balkan brand of "internationalism" and underestimating the brutal realities of the old army game of power politics played in the Balkans as a part of the larger game in Europe and thus throughout the world. A major portion of his book is devoted to the facts which he has assembled from the records of the meetings held in the various Balkan countries for the purpose of shaping a Balkan union. Standing alone, these facts appear significant

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and important in portraying a minor phase of Balkan history, and tell their story with clarity. But when viewed from a more realistic approach of power politics, their bone structure becomes soft, and Geshkoff's idealism thus throws the whole Balkan problem out of focus, since any realistic presentation of the efforts for a Balkan union must point out that back of the Balkan moves had been the continuous weakening of the League of Nations, Germany's new aggressive attitude, and the growing and well-justified fear that the Balkan states had become once more pawns in the struggle of the Great Powers. We cannot but feel, as a result, that Geshkoff's product defeats itself through the manner of ignoring the horrible realities of Europe's politics, that his conclusions are smug and dull, mirroring too much the official welcoming and parting addresses of the delegates at various conferences. The main value of the book lies in the author's careful gathering of various bibliographical references pertaining to the Balkans; indeed, Geshkoff's doctoral thesis is really the best bibliographical introduction to the political problems of that unfortunate peninsula. Equally valuable are the thirteen documents reprinted in the appendix. But the treatment is no improvement on N. J. Padelford's *Peace in the Balkans* (1935) and R. J. Kerner and H. N. Howard's *The Balkan Conferences and the Balkan Entente, 1930–1935* (1936); in fact, the latter still remains the best work on this topic.—J. S. ROUCEK.

Papers Relating to the Foreign Relations of the United States—The Lansing Papers, 1914–1920 (Department of State. Washington: Government Printing Office, Pp. lxii, 801, and xl, 576, $2.75) constitutes a collection of documents pivoting around the services of Robert Lansing in the Department of State. The documents touch on such vital subjects in American diplomacy as loans to belligerents, armed merchant ships, submarines, the participation of the United States in the First World War, relations with Russia before and after the revolutions, and the Monroe Doctrine as interpreted in times of great tension. Most of them were kept in the personal possession of Mr. Lansing and were not obtained by the Department of State until after his death in 1928. The volumes add considerably to previous departmental publications, although only a few contributions can be mentioned in the scope of this review. Additional information is made available on such matters as the Lansing-Ishii agreement, the case of Edith Cavell, the author's views on the desirability of an interventionist policy in the Caribbean for reasons of national safety, and his attitude regarding a war with the German Empire. As early as August, 1915, Secretary Lansing wrote that our usefulness in the restoration of peace might be increased by a state of war between this country and Germany. The material previously published by the Department relative to loans to belligerents in *Foreign Relations Supplements*

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for 1914 and 1915 (published in 1928) was scanty and has been greatly amplified in the Lansing Papers. It should be mentioned, however, that the Nye Committee inquiry had brought to light, in 1936, practically all of the new documents regarding loans. Altogether, the Lansing Papers should prove of great value to historians and political scientists in their studies of the critical years of the First World War. They arouse hope that the Department may be given strong congressional support in the further carrying out of its publication policy.—BENJAMIN H. WILLIAMS.

Major G. A. Roush's *Strategic Mineral Supplies* (McGraw-Hill Book Co., Inc., pp. xvii, 485, $5.00) is a useful addition to the literature on the problem indicated by the title. The author examines the situation of the United States in regard to the supplies of twelve minerals which are or recently were on the War Department's list as "strategic materials," i.e., materials essential to the national defense, which have to be obtained largely from sources outside of the United States. The twelve minerals studied are manganese, nickel, chromium, tungsten, tin, aluminum, antimony, mercury, platinum, mica, iodine, and nitrogen. Detailed data are presented on the requirements, uses, substitutes, ores and ore reserves, world output and supply, United States supply, prices, utilization, tariffs, and political and commercial control of each of these minerals. Numerous tables and charts accompany the text. There are occasional inaccuracies in the headings and arrangement of tables, as on p. 320, where figures for the world production of platinum are given in thousands of troy ounces but are said to be "in troy ounces." The discussion of the military uses of each of the minerals is inadequate, and more attention could have been paid to probable future developments. For instance, the nickel developments in Finland are hardly mentioned. The data are nevertheless valuable for reference purposes. The author makes many recommendations as to the policies that should be pursued by the United States to safeguard its supplies. In regard to most of the minerals discussed, the maintenance of sufficient stocks is advocated as essential to security. A pioneer attempt is made also to construct indices of the self-sufficiency of the Great Powers in twenty-five important minerals. The author recognizes that the results of this attempt are merely rough approximations, but hopes that they "may serve as a basis for further study and refinement." Attention is drawn also to the significance of the data on the imports and stocks of essential minerals as throwing light on the political intentions of the various nations of the world.—OLIVER J. LISSITZYN.

Sir Alfred Zimmern's *Spiritual Values and World Affairs* (Clarendon Press, pp. 170, $3.00) contains the substance of a series of lectures addressed primarily to students in the Faculty of Theology at Oxford and

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delivered in the early months of the fateful year 1939. After suggesting that "the direct influence of the churches on British foreign policy in the last twenty years" had perhaps done more harm than good "to mankind as a whole," the author proceeds to give a bill of particulars to his listeners and to instruct them in some of the realities of international politics. Many zealous Christians, for example, had sought a sign from Heaven and had thought they had found it in a piece of political machinery at Geneva, without understanding its limitations or the conditions necessary if it was to become an instrument of world order rather than as an expression of a particular British view of what a League of Nations should be and do. As a result, a disillusionment came when world peace was not immediately ushered in, and people rushed to other panaceas just as they had sought in Geneva "an opiate for the disorders of the spirit." It is the duty of Christians to seek to "make spiritual values penetrate the whole of life" and therefore foreign affairs as well as all others. Foreign affairs, however, are almost entirely outside the individual's personal experience, and thus he is tempted to fall back upon wishful thinking and to be peculiarly vulnerable to panaceas and propaganda of all sorts. In chapters on "The War and Its Aftermath," "Peace," "Our English Burden [of Empire]," and "The Colonial Problem," the author offers penetrating observations on such questions as the political immaturity of the German people, the demands of Germany's rulers for changes in the *status quo* in the name of dynamic justice, the political superiority complex of the British people, and conclusions as to the application of Christian principles to the question of continued British colonial trusteeship.—FRANK M. RUSSELL.

The Geneva Research Centre has recently issued the ninth in a series of annual studies entitled *The United States and the League, the Labour Organisation, and the World Court in 1939* (Geneva Studies, Vol. XI, No. 1, pp. 67, $.40 or 1.75 fr. Suisse). This composite account, prepared by a group of Americans in Geneva, proves that the lack of League membership has not resulted in lack of interest, coöperation, and participation; in fact, 1939 witnessed greater American support for the League and the I.L.O. than any year since their creation. As war came nearer, American participation in the League steadily grew—not in the political field, of course, but in its technical and scientific activities. In the realms of economics, finance, health, intellectual coöperation, housing, nutrition, epidemics, hygiene, our government has been interested and American citizens have been active participants. The United States continued to transmit considerable amounts of data to the League, and nineteen treaties were registered during the year. American relations with the World Court remained unchanged during 1939, with Judge Manley O. Hudson retaining his seat on the tribunal. With five years of membership in the

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I.L.O., and with one American as director and another as chairman of the Governing Body, the past year saw a definite accentuation of American coöperation and support. Even during war, President Roosevelt has expressed the confidence that the I.L.O. "can and will be of service to its members, indeed to society as a whole." What the record for 1940 will be, one can but conjecture.—IVAN M. STONE.

International Law Situations, with Solutions and Notes, 1938 (Naval War College. Washington: Government Printing Office, pp. vii, 178, 25¢.) was prepared by Professor Payson S. Wild, Jr., who, as associate for international law at the Naval War College, succeeds to the task so ably performed by Professor George Grafton Wilson for over thirty years. The topics discussed by the senior and junior classes of 1939 are: (1) belligerent and neutral rights in regard to aircraft; (2) force short of war: blockade and occupation in time of peace; and (3) insurgency and civil strife—protection of ships of third states. The latter two of the three topics involve, respectively, situations closely paralleling the Sino-Japanese conflict and the Spanish civil war. It is of interest to note that, with regard to the case of an "undeclared war," the Naval War College concludes "that the state employing force may interfere with the rights of third states to an extent reasonably necessary for the attainment of the military or naval objective. Quasi-neutrals must accept some inconvenience" (p. 87). Appendices containing documents concerning the case of the U.S.S. *Panay* and the scheme of observation of the Spanish frontiers, together with an index, complete this interesting and useful little volume. —VALENTINE JOBST III.

In the understandable belief that the countries of Europe will have a major responsibility in determining the kind of peace to follow the present war, Professor William P. Maddox has performed a service in compiling in his *European Plans for World Order* (American Academy of Political and Social Science, pp. 44, $0.15) the European peace proposals. After briefly introducing seven thoughtful criteria for judging peace plans, the author presents the following current suggestions: official declarations (British, German, and Papal); minority proposals (British Labor party); plans for reorganizing the League; proposals for an international police force; and the principle of federal unions, either on the basis of democracies or of all Europe or of regional federations within Europe. Professor Maddox denies that such proposals are futile, because he is of the opinion that it is only through study of such principles that "a reasonably well-ordered world might be established." Whether such sane and sober plans can withstand the heat of battle remains to be seen.—WILBUR W. WHITE.

One usually becomes exasperated with the utter speciousness of the

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majority of the arguments directed against the American trade agreements program. In John Day Larkin's *Trade Agreements; A Study in Democratic Methods* (Columbia University Press, pp. xii, 135, $1.00), the most popular of these arguments are reviewed and answered. The author contends that the Trade Agreements Act is constitutional and that the trade agreements procedure is far more democratic than the old system of congressional tariff-making. He shows that the plea for Senate ratification of trade agreements is in reality but a request for a return to log-rolling tactics and higher tariffs. His description of the trade agreements organization is good, though perhaps more attention is given to the personalities involved than is necessary. The contrast between the procedure for hearing interested persons in trade agreement negotiations and the pressure politics involved in the congressional method is effectively presented. Finally, the author recalls the difficulties inherent in the cost-equalization formula of the 1920's. The book is written in the popular style of the propagandist. Fortunately, since accuracy has not been sacrificed, the majority of thoughtful students of international economic relations will welcome this type of propaganda.—CARL KREIDER.

The third edition of George Grafton Wilson's *Handbook of International Law* (West Publishing Co., pp. xxiv, 623, $5.00) has the merits of logical organization, clear definition, and terse style. About half the text is devoted to the laws of peace and half to the laws of war and neutrality. Important documents codifying international law appear in an appendix of one hundred pages. Quotations from cases and treaties are inserted in text and footnotes. More than four hundred cases are cited, including the older classics and some of the most recent ones. The book is particularly helpful in the sections relative to the laws of war because it gives both an historical background and the practice followed during and following the war of 1914–18. The book is of value to the lawyer and to the student. It is a good text for teaching purposes, especially for a course which can devote but a limited number of hours to the subject.—CHESNEY HILL.

A Collection of Neutrality Laws, Regulations, and Treaties of Various Countries (Carnegie Endowment for International Peace, 2 vols., lxvii, 781; xxvi, 783–1615, $10.00; loose leaf edition with service to end of 1942, $12.00), edited and annotated by Francis Déak and Philip C. Jessup, grew out of the preparation of the Draft Convention on the Rights and Duties of States in Naval and Aërial War by the Research in International Law of the Harvard Law School. The collection is complete and well organized, with excellent notes by the editors. It is obviously a "must" item for students of international law.—LLEWELLYN PFANKUCHEN.

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POLITICAL THEORY AND MISCELLANEOUS

Education for Democracy (Bureau of Publications, Teachers' College, Columbia University, pp. 466, $2.50) represents a symposium of addresses and a summation of round-table discussions resulting from the Congress on Education for Democracy held at Columbia University, August 15–17, 1939. The Congress was sponsored, under the leadership of Dean William F. Russell, by the Lay Council of Teachers' College, which was brought into being in 1938 as a result of the series of lay conferences that for five years had been held semi-annually by the Lay Conference group of educators and laymen which Teachers' College had called together. It was composed of educators who represented all departments of education from the universities and Office of the United States Commissioner of Education to the elementary schools, and of laymen representative of business, agriculture, labor and the professions—men and women alike—all outstanding leaders of Great Britain, France, Sweden, and the United States. The objective was to seek ways to harmonize the benefits of an industrial age, science, education, the individualistic "I-and-my-small-family-on-our-soil" psychology and the collectivist "we-and-our-shared-destiny" dogma, with liberty and equality of the individual, and make of it all a democratic institution that will function with efficiency. To accomplish this end, it was agreed that there must be broad education, sympathetic understanding, and frank consideration of the rights of all people; there must be generous coöperation among "labor" and "capital" and "agriculture." There was general agreement, too, that the problem does not constitute a job but a program, and that other conferences and congresses must be held. With few exceptions, the addresses are reported in full in the volume, together with summation of group meetings. Dean Russell has done an admirable piece of work in grouping the discussions under challenging headings, and in his introduction and summation he has captured the spirit of the Congress and its objective. The volume is broadly illuminating and inspirational, rather than factual in detail, and thus should have its place by the side of encyclopedic discussions of everyday problems that fill our shelves.—BURTON L. FRENCH.

Although unquestionably in the front rank of pioneering interpreters of political trends and processes, Alexis de Tocqueville has in later decades been curiously neglected by students of the social sciences. In books published in 1897 and 1910, respectively, Eugene d'Eichthal and Pierre Marcel dealt with him, somewhat restrictedly, as an apostle of liberalism; and Antoine Redier's *Comme Disait M. de Tocqueville*, published in 1925 and ironically dedicated to "All who have hitherto been unaware of de Tocqueville," presented the first adequate picture of the great Frenchman as a man. Mr. J. P. Mayer's *Alexis de Tocqueville; A Biographical Essay*

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in Political Science, translated by W. M. Bozman and C. H. Hahn (Viking Press, pp. xvii, 233, $3.00) is in the Redier manner, but, as the subtitle suggests, with somewhat more attempt at interpretation on political lines. Three well written biographical chapters are followed by a chapter each on *Democracy in America*, de Tocqueville's personal experiences in official life (including a brief period as minister of foreign affairs), *The Ancient Régime and the Revolution*, and de Tocqueville's political philosophy. On the significance of *Democracy in America*, the author quotes with full approval John Stuart Mill's characterization of the work as one constituting "the beginning of a new era in the scientific study of politics." A lively account of the motivation and execution of the equally significant *Ancient Régime and the Revolution* further discloses the sources and character of de Tocqueville's sociological and political views. And a chapter on the more general aspects of his political philosophy comments, even though somewhat thinly, on his basic concepts, not omitting allusion to his little known but sane and convincing refutation of the racial theories propounded by his friend Count Gobineau and implicit in German National Socialism today. The discussions, although brief, are generally sound; and adequate documentation is provided in notes and appendices. —Frederic A. Ogg.

The motivation of *Science and Politics in the Ancient World* (Oxford University Press, pp. 243, $2.50), by Benjamin Farrington, was, according to the author, "the wish to make a comment on the passion of Lucretius," which he believes to have been occasioned, not by mental unbalance, but by indignation at the "political religion" in Rome. This latter is described as the "conscious retention" by government of the popular belief in the gods as "beings who punish or confer benefits upon men," although the belief was recognized as irrational, as a means of maintaining the ruling caste in power. Professor Farrington believes that it was the advocacy and teaching of a political religion, especially by Plato and the Stoics, and particularly by the later Stoics who exerted great influence in Rome, that undermined the "spirit of inquiry into the nature of things" which flourished so greatly in the Ionia of the sixth century B.C. He points out that it was the lofty purpose of Epicurus and of Lucretius, while not renouncing religion as "belief in the gods as objects of reverence and devotion," "beings immortal and blessed," but beings who do not "take part in the management of the universe," "to resume the full tradition of Ionian natural philosophy both as pure science and as a solvent of superstition." Though the argument seems in places somewhat strained, with what appears to be a consequent distortion of the picture, the account of political thought in the centuries here covered is vital and interesting. While making no direct allusion to the present, moreover,—no-

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where, happily, does the word propaganda appear—the lesson to be drawn by the contemporary world is evident on every page.—ELLEN DEBORAH ELLIS.

With the promising title, *Andrew Jackson and the Constitution* (Christopher Publishing House, pp. 168, $2.00), Frances Norene Ahl sets out to demonstrate the thesis that Jackson was a "personal despot" whose actions were "unconstitutional and lawless," and who "inculcated into the popular mind an utter disregard for law and order" (p. vii). What follows is a brief and exceedingly elementary summary of well-known facts concerning the President's career, written on the high-school level, and adding nothing at all to our understanding either of Jackson or of the Constitution. Perhaps one should not expect too much of a writer who thinks it is important to call particular attention to the fact that the General was of Scotch-Irish descent, and had "the characteristic traits of these two races in an exaggerated degree," namely, the "impetuosity which is Irish" and the "persistence which is Scotch" (p. 15). The book is full of similar *clichés*. Thus we are solemnly assured that Jackson's opposition to nullification "arose rather from his imperious temper than from any belief that nullification was a constitutional error" (p. 117). The author also makes the interesting discovery that in some way Jackson was responsible for the Dred Scott decision (p. 124). But the book has one great merit. Added to a text of 113 short pages, and spread over twenty-nine additional pages, is a rare document which is usually difficult to find, the Constitution of the United States! It still makes good reading.—DAVID FELLMAN.

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RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

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AMERICAN GOVERNMENT AND PUBLIC LAW

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President. Peace and social and economic security of nations. Speech by . . . Manuel L. Quezon . . . Manila, 1939. 40 p.

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WASHINGTON

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League of Wisconsin municipalities. Powers and duties of mayors in Wisconsin cities: a summary of Wisconsin statutory requirements. Madison, 1940. 13 p. (mim.) 75c.

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FRANCE

French Information Center, Inc. The French Information Center has distributed a great deal of material on the European War, for the most part in the form of speeches of Government officials. Examples are: Rationing, a war weapon, by Paul Reynaud; Text of the address delivered by Ronald Campbell, British Ambassador to France . . . ; France of tomorrow, by Jean Giraudoux; and many others. A great deal of mimeographed matter, also, has been issued from the Center's offices in Rockefeller Center, New York.

GERMANY

Auswärtiges amt. The German white paper. Full text of the Polish documents issued by the Berlin Foreign office. Berlin, c.1940.

——— Polish documents relative to the origin of the war. First series. Berlin, 1940.

——— Polish acts of atrocity against the German minority in Poland . . . by Hands Schadewaldt. Berlin, 1940. 259 p. *Same,* 2d revised edition, 1940. 311 p. (Also issued under imprint of German Library of Information, New York.)

——— Pictorial report on Polish atrocities. Berlin, 1940. 63 p. illus.

——— (Under the auspices of the Foreign office, there was begun on March 15, 1939 a periodical called "Berlin-Rom-Tokio; Monatsschrift für die Vertiefung der kulturellen beziehlingen der völker der weltpolitischen dreiecks. The latest number seen was for November 15, 1939, and it is believed that publication has ceased.)

GREAT BRITAIN

Office of parliamentary counsel. Defence regulations . . . London, M. H. S. O., 1940. 167 p.

(The British Library of Information, New York, sends out free printed copies of speeches of various ministers relating to the war; also addresses of Lord Lothian, British ambassador to the United States.)

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NETHERLANDS

Ministry of Foreign Affairs. Netherlands orange book. Summary of the principal matters dealt with by the ministry of foreign affairs in connection with the state of war up till November, 1939, and suitable for publication. Leyden, 1940. 31 p.

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——— Overzicht van de voornaamste in verband met den Oorlogstoestand door het Ministerie van buitenlandsche zaken behandelde en voor openbaarmaking geschikte aangelegenheden, November 1939–April 1940. 's-Gravenhage, 1940. 53 p.

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Ministerio de Relaciones Exteriores. Antecedentes relativos al hundimimiento del acorazado "Admiral Graf Spee" y a la internacion del barco mercante "Tacoma." Montevideo, El Siglo Ilustrado, 1940. 90 p.

——— Uruguayan blue book. The documents relating to the sinking of the Admiral Graf Spee and the internment of the merchant vessel Tacoma. Montevideo, 1940.

FOREIGN POLICY ASSOCIATION

The Foreign Policy Association has begun the publication of a fortnightly publication, "Pan American News." To date, it has been mimeographed.

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